

Number 11

**THE STRUGGLE FOR POLITICAL AUTONOMY**

**Papers and Comments From The Second Newberry Library  
Conference On Themes In American Indian History**

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THE SECOND NEWBERRY LIBRARY CONFERENCE ON THEMES  
IN AMERICAN INDIAN HISTORY

THE STRUGGLE FOR POLITICAL AUTONOMY

- 5 Introduction Frederick E. Hoxie
- A. An Introduction to the Political History of American Indians
- 8 "The Context of American Indian Political History: An Overview and Critique"  
Raymond D. Fogelson
- B. Political Autonomy Without European Control
- 22 "The 'Middle Ground' for Indians in the Great Lakes"  
Richard White
- 33 "Blood of Martyrs; Blood of Indians. Toward A More Balanced View Of Spanish Missions in Seventeenth Century North America"  
David J. Weber
- COMMENTS
- 49 R. David Edmunds
- 53 Olive P. Dickason
- C. Tribal Autonomy Under Siege
- 59 "Tribal Reorganization in the Southeast, 1800 - 1840"  
Mary Young
- 83 "The Alcaldes: Indian Leadership in the Spanish Missions of California"  
George Phillips
- COMMENTS
- 90 Gary C. Anderson
- D. The Emergence of Modern Politics in the Reservation Era
- 94 "Crow Leadership Amidst Reservation Oppression"  
Frederick E. Hoxie
- 107 "Crazy Snake and the Creek Struggle For Sovereignty: Native American Legal Culture And American Law"  
Sidney Harring

## COMMENTS

125 Loretta Fowler

134 James Schlender

E. Self Determination and Termination: The Paradox of Modern Indian  
Autonomy.

137 "Tribal Governments and the Struggle Against Termination"  
Donald L. Fixico

146 "A Non-Fly In Amber: The Modes Of Tribal Government"  
Fred Ragsdale

## COMMENTS

159 Professor F. P. Prucha

F. A Personal View

162 "Indian Self-Determination: The Real And Indian Self-Governance: The  
Reality"  
Joseph DeLaCruz

G. Conference Commentaries

171 Summary  
Raymond D. Fogelson

178 Final Comments  
Michael D. Green

H. Additional Material

184 Agenda

187 Participants

## INTRODUCTION

Ideally, a general history of Indians in the United States should fuse the general and recurring in Indian history with the uniqueness of the stories of specific individuals and the concrete social and cultural entities in the multitude of tribes. He who would essay a general history must organize it according to general unifying themes and yet preserve the diversity and complexity of the individual histories. Sequences, cycles, or something comparable can provide the basis of organization, but they cannot be allowed to obscure the richness of individual lives or tribal stories. In my opinion, focus upon the politics and changing governmental systems offers one way of achieving these ends. Tracing the complex history of persistence and change through its political context from jural communities within the tribe to a tribal-wide political arena, from confederacies and regional cooperation to the national organizations of today exposes individual Indians to view as they favored or opposed actions in coping with situations confronting their societies. It presents the possibilities they saw in various situations and the means they used for the resultant outcomes in the general overall story of transition from American Indians to Indian Americans.

from Robert Berkhofer, Jr., "The Political Context of a New Indian History," Pacific Historical Review 40 (August, 1971), p. 357-382.

Virtually all writing about the political history of Indian communities published since 1971 refers at some point to the ideas contained in the quotation above. Robert Berkhofer's essay appeared while Bury My Heart at Wounded Knee rode astride the nation's best-seller charts and young warriors battled to retain control of Alcatraz Island in San Francisco Bay. With popular and political interest in Native Americans erupting around him, Berkhofer noted that the "great desideratum in the writing of Indian history becomes putting more of the Indians into it."

But how? Relying on traditional written sources and focusing on the policies of the federal government promised only to produce generalized portraits of "the Indian" and would surely do little to populate new histories with significant numbers of native people. How might scholars encompass both the scale and scope of native civilizations?

In Berkhofer's 1971 perspective, traditionally trained historians had thus far done nothing to explain the "two obvious but seemingly contradictory facts presumed basic to Indian life: Indian societies ... changed drastically ... at the same time that Indian ethnic identities and societies remained static...." How should scholars illuminate processes of change within Indian communities in a way that would recognize both their continuity with precontact ancestors and the transformations that followed the arrival of Europeans?

Berkhofer's answer to these questions was his recommendation that historians focus on the history of Indian politics. Here was a theme sufficiently broad to encompass centuries of history, yet narrow enough to demand precise descriptions of native life. A focus on politics would bring scholars inside native communities and would counteract the habit of examining tribes from the external perspective of federal policy. A political emphasis would also enable historians to present individual Indians as actors in--rather than victims of--

history. Concrete situations--and options--might replace faceless "forces" as the context for events. This new approach, Berkhofer noted, would encourage students to discard such wooden terms as "tribe," to consider new topics (such as Indian-Indian relationships), and to consider new sources (such as oral history and folklore).

In years since 1971 historians and anthropologists have tried to follow Berkhofer's advice. Policy studies have been joined by a growing array of tribal histories, biographies, and thematic descriptions of change in Indian religious, economic and social life. Because two McNickle Center publications, Scholars and the Indian Experience, edited by William R. Swagerty (Bloomington, Indiana: Indiana University Press, 1984), and New Directions in Indian History, edited by Colin G. Calloway (Norman, Oklahoma: University of Oklahoma Press, 1988), catalogue much of this new literature, there is no need to do so again here. Nevertheless, it is significant to note that books like Loretta Fowler's Arapaho Politics, 1851-1978 (Lincoln, Nebraska: University of Nebraska Press, 1982) and Michael D. Green's The Politics of Indian Removal (Lincoln, Nebraska: University of Nebraska Press, 1982) mark both a rejection of static definitions of tribe and a recognition that native politics were--and are-- continuous and complex.

Remarkably--at least to practitioners in the field--the rising sophistication of scholarly approaches to Indian history has had little impact on the general academic understanding of native societies. In 1989, with One Night Stands With American History having replaced Bury My Heart at Wounded Knee on the best-seller lists, and Indian bingo now taking the place of tribal militancy on the evening news, there is less urgency associated with the subject. Indeed, textbooks continue to emphasize the differences between native and European cultures, and narratives of Indian-white contact focus almost inevitably on the "clash" of the two cultural traditions. And we continue to await a "general history of Indians" Berkhofer suggested lay not too far beyond his 1971 horizons. Despite pride in what has been achieved, I have found myself increasingly frustrated with the inability of Berkhofer's advice to penetrate very far beyond a small coterie of devoted followers as well as with my colleagues willingness to celebrate monographs and forget the big picture.

The February, 1989 Newberry conference, "The Struggle for Political Autonomy," was conceived to take stock of writing in Indian political history and to attempt a new synthesis of the subject. We wanted to see how far we had come in the eighteen years since Berkhofer's call to his fellow historians and to assess how close we now were to a "general history" of Indian political life. By focusing on autonomy we hoped to avoid discussions of federal policy and to emphasize instead the internal political dynamics of native communities. We were also curious to see if comparable processes and sequences might be observed in different communities and at different times.

Eight scholars were asked prepare papers which examined a specific aspect of Indian political history; eight others were asked to comment on these papers and to relate them to the broader themes of autonomy and Indian political history. All of the papers were drawn from works in progress and were therefore reflective of the newest scholarship in the field of Indian political history. The commentators were senior scholars and Indian political leaders. The latter category was intended to keep our discussions focused on broad themes and wide-ranging issues.

Professor Raymond Fogelson of the University of Chicago agreed to provide an introduction to the subject, and Michael D. Green of Dartmouth College

accepted my invitation to serve as conference chair and commentator. As an anthropologist with long experience in Indian history (Fogelson was President of the American Society for Ethnohistory when he delivered his keynote address), Professor Fogelson was ideally suited to review the theoretical underpinnings of Indian political history. Professor Green, a scholar whose work was directly influenced by Berkhofer's essay and a teacher who has gone a long way towards presenting a new general history in his classes was similarly suited to his role. Our hope that the conference would move--as Berkhofer had suggested--from specifics to generalizations, from concrete events to broad processes.

The conference proceedings contained in this volume must speak for themselves. It is for the reader to decide how well we met our goals. It is relevant however, to report two reactions that were voiced repeatedly by the conference speakers and the nearly 100 people who attended the event. First, while everyone had their favorite paper, there was a strong sense among participants of the size and complexity of the subject. Partially this reaction came from people who had not been aware of the riches of the archival source being mined for a particular paper, and partially it derived from the excitement of hearing excerpts from projects still under construction. Second, there was a general feeling of frustration which appeared to arise from a realization that the academic world offers few opportunities for wide-ranging, "synthetic" discussions. People wanted more time to talk and more space to break out into small groups and special interest areas. It was difficult for the McNickle staff to defend an orderly schedule when we sympathized with this frustration.

This volume presents accurately how far we have come and how much is lies before us in the field of Indian political history. It is testimony to the scholars who participated and to the hard work of Center staff. Jay Miller has edited this volume with care and efficiency. Similarly, Violet Brown did an excellent job of managing conference arrangements and travel planning, and Mary Prindiville and Jane Levin assisted with registration. Newberry Academic Vice-President Richard Brown has encouraged and supported the idea for this and related conferences from conception, and has sustained the entire project through its various phases.

Finally, the conference on political autonomy and its 1988 predecessor on economic dependency were made possible with the assistance of the National Endowment for the Humanities. We are especially grateful for the Endowment's willingness to support a portion of participants' travel expenses. These participants included American Indian graduate students and teachers of Indian history from colleges and universities across the United States. A roster of those who attended the conference is included at the end of this volume.

FREDERICK E. HOXIE  
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July 1, 1989

## THE CONTEXT OF AMERICAN INDIAN POLITICAL HISTORY

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I begin with a serious confession. I do not know at this writing what this conference is about. Political autonomy is a notion less difficult to define than to apply. The Greek etymology of the word autonomy is simple enough: auto equals 'self', and nomos refers to 'law', 'governing', 'managing', or 'dealing out'. Thus 'self-government' is a fairly literal meaning. It is with the qualifier 'political' that we encounter difficulties. On one level the adjective 'political' seems necessary to distinguish political autonomy from other forms of autonomy arising in later usages, such as self-regulating organisms in botany, the autonomic nervous system in physiology, and such conceptions as individual autonomy or ego autonomy in psychology. On another level the word political presupposes a clear understanding of what is meant by a polity.

In the West a polity has come to refer to an organized community or body or a system of government. Since at least the time of Aristotle contrasting types of polity have been recognized. When Europeans crossed the Atlantic, they arrived with an array of accumulated political concepts that they believed could be directly applied, with little or no loss in translation, to native understandings of governance. They recognized sovereign Indian nations ruled by indigenous kings or emperors, often with princes and princesses-in-waiting; they came equipped with various conceptions of law, such as natural rights, rights of conquest, divine rights, property rights, legal procedures concerning alienation of land, and conceptions of criminal justice. Moreover, these legal and political notions were thought to be sanctioned by and embraced within universal religious orthodoxy and orthoproxy. Over time these European political theories and practices were modulated and modified as the combined result of internal ideological changes and of practical experiences in dealing with native populations.

In dialectical fashion, native political institutions and understandings underwent adaptive changes in response to the increasingly manifest unequal balance of power between native societies and European colonial governments and the emergent American nation state. Some of these general changes in Native American societies included active and passive resistance to external threat and encroachment; a subordination of individual initiative in an effort to strengthen collective solidarity; internal consolidation into tribal entities and confederacies; the development of new types of leadership to deal with outside authority; the increased significance of land as a basis for separate identity, along with clearer demarcation of territorial boundaries; a corresponding emphasis on descent, expressed through the metaphoric medium of blood quantum, as a primary criterion for group membership; the development of a supra-tribal ethnic and politico-legal status as Indians; the refashioning of political processes and governmental structures in the direction of closer conformity to Euro-American models; and the maintenance, manipulation, and reinvention of tradition to mark cultural distinctiveness vis a vis the dominant American culture and to maintain cultural distance from other minority populations. My major point is that European-derived political and legal conceptions and the policies following therefrom and the native reactions to these conceptions and policies combined to overwhelm and obscure aboriginal beliefs and realities and, over time, led to

their transformation. I paint these long-term trends with a broad brush. I expect the conference participants to fill in many of the finer details, to provide foregrounding and backgrounding perspectives, and to apply nuanced textures to my lightly limned picture.

The Native American struggle for political autonomy is an on-going process that has become increasingly visible and vocal during the past quarter century. Current Native American legal status vis a vis the Federal Government and state and local authorities is defined by statute but subject to continuous interpretation and reinterpretation. We know much about the formal organization of contemporary tribal governments but much less about their informal processes of decision-making. We have witnessed the accelerated fight for self-determination, preservation of Native rights, and cultural renewal.

An assumption underlying the structure of this conference is that Native American societies possessed political autonomy before the intrusive arrival Western Civilization. My task, as I understood it, is to suggest some of the dimensions of indigenous political organizations through which that autonomy was expressed before white contact wrought significant change. Your task as contributors to this conference is to examine the vicissitudes of Native American political autonomy in terms of historical processes underlying the transformations of how we got from there to here.

The interaction of two variables, played out through historical time, strikes me as especially crucial to our considerations. First, the nature of particular native social systems and their internal dynamics would appear to influence the subsequent direction of political change. The different political histories of, say, the Hopis and the Navajos, or the Iroquois and Chippewas, would seem to illustrate differential resistance or accommodation to change. The second variable concerns the nature and objectives of the specific sectors of white society impinging directly or indirectly upon native political systems. Initial contact situations vary considerably over space and time, as do later pressures on native social institutions. These differential circumstances must be factored into any account of political persistence and change. I stress that my two angles of approach are both variable; neither is a constant, nor can one be construed as an independent variable and the other as a dependant variable. The interaction is a dynamic one.

I turn now to a brief discussion of general theory in political anthropology to help orient some of my later remarks on traditional political systems in Native North America. The modern sub-field of political anthropology is said by some (Colson 1968:189 and Lewellan 1983:x) to have come into being in 1940 with the publication of African Political Systems, edited by Meyer Fortes and E.E. Evans-Pritchard and containing an influential preface by A.R. Radcliffe-Brown. However, this late emergence was surely preceded by an incubation period at least as long as the history of anthropology as a formal discipline. The genre of ethnographic monographs initiated by Lewis Henry Morgan's League of the Ho-de-no-sau-nee, or Iroquois (1851) included at least minimal descriptions of political systems, and in Morgan's case the treatment was more maximal than minimal. Classical evolutionists from Sir Henry Maine and Herbert Spencer through Morgan, Tylor, and later scholars provided hypothetical stages of unilineal political progression. Practically all pre-1940 anthropology textbooks and anthologies contained discussions of forms of political organization found throughout the primitive world.

By my rapid reckoning at least three Americanist scholars anticipate developments in modern political anthropology. First and foremost is Robert H.

Lowie. His Primitive Society (1920) and The Origin of the State (1927) emphasized three criteria for statehood: "territoriality, legitimacy, and monopoly of violence" (Murphy 1972:67). Lowie discerned continuity between the tribe and the state through the abiding importance of kinship and locality and of the significance of sodalities or associations that were not based upon kinship, and in some ways diluted or complemented the power of kinship as an organizing principle. For Lowie sodalities were perceived as seeds of the state.

Lowie's student, Julian Steward, has to be regarded as an important political anthropologist for his classic work on the social organization of bands, especially his Basin-Plateau Sociopolitical Groups (1938) and for his cultural ecological approach to the study of culture change. His later theory of multilineal evolution, featuring levels of socio-cultural integration, provides the basis for most later American topologies of political organization (Steward 1955).

A more or less forgotten figure who deserves remembrance for his efforts to fuse an historical approach together with a comparative study of Native American political organization is William Christie MacLeod. MacLeod's three major works--The Origin of the State: Reconsidered in the Date of Aboriginal North America (1924); The American Indian Frontier (1928); and The Origin and History of Politics (1931)--are all laced with interesting data, raise issues that were to lie dormant for at least another generation, and attest to a lively intellect.

The British structural-functionalists who were said to initiate modern politician anthropology played out their synchronic, equilibrium models in Sub-Saharan Africa. Centralized states possessing differentiated political institutions with well defined political offices, principles of succession, hierarchies of authority and communication, and clear control of force were contrasted with so-called acephalous or stateless societies. Though usually smaller in scale, these acephalous societies often approached centralized states in size and in technological and economic complexity. The normal modes of analysis developed in Western political science were unequal to the task of explaining how these systems operated. Political action in these superficially amorphous, stateless societies was found to be structured through corporate unilineal descent groups and through segmentary lineages.

After more than a decade of fine-grained empirical research, the limitations of static structural-functionalism were becoming apparent and more dynamic models began to surface. Max Gluckman (1960) emphasized the role of conflict in political processes, especially in his notion of "rituals of rebellion." Increased attention was also paid to the role of factionalism as a dynamic force in political processes. Edmund Leach, analyzing data from Highland Burma (1954), recognized the co-existence of alternative models of political action within the same social system. He was also one of the first to appreciate the significance of discrepancies between normative models that political actors carried in their heads and on-the-ground realities. For Leach political systems were seen less as monolithic and constraining and more as option structures that could be manipulated by political actors. The gradual shift in British political anthropology moved away from structural stability and functional equilibrium toward considerations of process and change.

These theoretical developments in Britain had very little direct impact upon the way in which Native American political systems were studied. For instance in the American Festschrift for Radcliffe-Brown, The Social Anthropology of North American Tribes (1937), only John Province's essay, "The Underlying Sanctions of Plains Culture" deals with a political subject. E. Adamson Hoebel's

1940 monograph on The Political Organization and Law Ways of the Comanche Indians, as well as his better known work on the Cheyennes (1941, 1960), bears some faint traces of British structural-functional influence. Even Robert H. Lowie in his Huxley Memorial Lecture, "Some Aspects Of Political Organization Among The American Indians" (1948), delivered before the Royal Anthropological Institute, avoids most of the issues in political anthropology raised by his British colleagues and audience.

One of the few Americanist studies clearly informed by British theory is Fred Gearing's Priests and Warriors: Social Structures for Cherokee Politics in the 18th Century (1962). Gearing not only shows how clan and lineage structures operated in traditional Cherokee political structures, but he recognizes the existence of alternate structures, what he terms "structural poses," attuned to different social tasks. Gearing also analyzes the processes by which the political model localized on the village level was extended to a tribal level and later transformed into a self-proclaimed state formation known as the Cherokee Nation. In my review of Priests and Warriors for the American Anthropologist (1962), I criticize some of the details but labelled it a landmark study. Over a quarter of a century later, I find no reason to revise my judgment. Elizabeth Colson's monograph on the modern Makah (1953) as well as several modern studies by Canadian scholars represent partial exceptions to the general lack of British influence on the study of American Indian political institutions.

Many explanations for the failure of British theories to take hold in the study of Native North American political systems may be advanced. On one level these theories developed out of the investigation of on-going African societies during a rare period of temporary stability afforded by British colonial rule. In contrast, American efforts to study Native American politics, including Gearing's, were primarily reconstructive and historical. Until recently studies of the politics of contemporary reservation communities were scorned as applied anthropology, having little or no theoretical import.

However, on another level, while the British had to shed their structural-functional strait jackets to discover change and history, American anthropologists had always maintained a primary concern with diachronic processes. At the same period that modern political anthropology matured in Britain, acculturation studies flourished in America. Moreover, post-World War II American Anthropology witnessed a resurgent interest in cultural evolutionary studies spearheaded by Leslie White and Julian Steward and enshafed by developmental theories concerning the origins of the state in archeology. With regard to political anthropology much effort went into the construction of taxonomies, the theoretical inadequacies of which we are still wrestling with today. The models of political evolution proposed by Steward (1955), by Elman Service (1962, 1975), and by Morton Fried (1967) were primarily descriptive rather than causal. Causal models, denoted by arrows and buttressed by quantitative data were more common in archeology, but they suffered from an almost inevitable materialist bias.

The basic classification of preindustrial political systems recognizes a first-order distinction between centralized and uncentralized, or so-called "egalitarian" systems. At a second level, centralized systems are usually subdivided into states, characterized by stratification into classes, and into chiefdoms based upon rank. Uncentralized systems are subdivided into tribes with a wide variety of characteristics and into smaller-scale bands.

When Native North America is reviewed in terms of such topological classifications numerous problems arise. Despite the optimistic vision of the McNickle Center in sponsoring a volume about America in 1492, our knowledge of the details of Native North American political organization at that arbitrary time-marker can only be glimpsed imperfectly through the lens of archeology or through qualified interpolations from later periods. Even utilization of a moving baseline extending from the early sixteenth century to the mid-nineteenth century does not insure that drastic changes in native political structures have not occurred before the establishment of permanent white contact. Charles Hudson perceived a "black hole" in Southeastern ethnohistory spanning the time between the elaborate chieftainships described by the DeSoto chronicles and the more egalitarian eighteenth-century confederacies, tribes, tribelets, and autonomous villages observed by traders, travellers, and early settlers. Marvin Smith (1987) has tried to fill this singular lacuna through archeological research, and it seems certain that increased warfare, population dislocations, and the effects of epidemic disease contributed to the political transformations in the interior Southeast.

Eleanor Leacock (1954) has documented the early effect of the fur trade in sharpening the territorial boundaries of Montagnais-Naskapi hunting bands. While not denying the influence of the fur trade in accentuating Montagnais-Naskapi territorialism, I believe a more flexible and generalized religious basis for Northern Algonkian territorialism can be discerned. Paraphrasing informant testimony, Julius Lips surmised

that many Indians seem to believe that not the Indians but rather the game animals were the true owners of the hunting grounds. It seemed to me that Naskapi hunters regard themselves merely as servants of the chieftains of the game animals whose ceremonial prescriptions at the hunt they have to follow to safeguard their own livelihood (1947:388).

The family band headman often served as the primarily ritual specialist who negotiated with the ultimate landlords, the animal "bosses" (Cf. Tanner 1979).

My major points at this juncture are that the search for pristine, primordial political structures may be a futile effort to capture an anthropological chimera, that native political structures tended to be fluid and forever adapting to new contingencies, and that internal native understandings of "how the system worked" must be considered along with external formal features favored by political taxonomists.

Another feature that impresses one in surveying traditional political systems in Native North America is their variety and differences of scale, ranging from small hunting bands in the Arctic, Sub-Arctic, and Great Basin to political systems approaching stratified states in the Lower Mississippi and Caddoan areas. Practically every society was interactive with other societies, as we can determine from trade networks, trail systems, redistributive centers, ethno-cartography, and lists of names for other groups. Maybe the only exception to this truism were the Eskimos of Thule who were surprised to learn that there were other people in the world when they first encountered Admiral Peary and his Polar exploring party.

My impression is that Native American social groups were quite mobile in pre-contact times, despite the absence of the horse. When we think of mobility, we usually associate it with yearly cycles of hunting and gathering bands, but it was generally true that coastal peoples were bilocal, as were many

Mississippian farmers in the Midwest. Village sites changed frequently for a variety of reasons. The documented historical resettlement of the Tutelos and Tuscaroras among the Iroquois, the Yuchis among the Creeks, the Seminole movement into sub-tropical Florida, the Tewa enclave of Hano among the Hopis of First Mesa, the expansion of the Cherokees into the Overhills area of Tennessee and into northern Georgia, the Kickapoo exodus to Mexico--all these large-scale population movements doubtless had pre-contact precedents and analogues. Mixed ethnic settlements, a frequent post-contact phenomenon, probably also existed prehistorically, as is suggested by the totally different contemporaneous art styles reflected in the shell engraving from the Craig Mound at Spiro (Phillips and Brown 1975-1982).

I would now like to take a closer look at the major taxonomic categories of political systems and consider how well they fit the North American data. I will focus primarily on the category of tribe, since tribes are now the primary political units for Indian identification and recognition. I've already mentioned that true states -- in the sense of class stratification, sovereign leadership with aristocratic bureaucracies, full-time priesthoods, the power to collect formal tribute, levy taxes, or recruit labor, and the existence of formal legal codes -- were seemingly absent in Native North America, although some Mississippian chiefdoms and their historical descendants were approaching statehood.

At the other end of the political spectrum are bands. Bands are assumed to be limited in population to 25 to 150 persons. In many areas micro-and macro-bands are recognized, their constitution usually being dependant upon fluctuation of the food supply, as in aggregations at summer fishing camps, or upon the need for additional personnel to exploit particular resources, as in Great Basin rabbit drives or winter seal hunting at breathing holes among Central Eskimos. Bands are further classified into patrilocal bands, composite bands, and more anomalous types.

Julian Steward (1936) was the first to argue for the adaptive value of patrilocal residence for hunting groups. The essential logic of the argument assumed that it was advantageous for a man to maintain residential continuity after marriage because of his knowledge of the local hunting area. Elman Service (1962) generalized patrilocality to a near universal among hunting peoples. Unfortunately, many northern hunting groups turn out to be either matrilineal or bilateral in terms of descent. Moreover, ethnohistorical information indicates the Algonkian-speaking Montagnais-Naskapi were matrilocal (Leacock 1955), as were a significant number of Northern Athabaskan bands (see Krech 1980:84-88 for a review of evidence). If the logic lying behind the supposed advantage of patrilocality for hunting efficiency is reexamined, one could just as well argue that a hunter would be doubly advantaged by knowing two hunting areas: that his natal family and that of his wife and in-laws.

Composite bands are diffuse groups that lack the requirements for band exogamy or post-marital residences rules. Service (1975) argues that composite bands are post-contact phenomena deriving from the breakdown of patrilocal bands after severe depopulation. However, I think it likely that composite bands always existed as fluid forms of organization that allowed individuals and their families the freedom to leave because of personal animosities, lack of confidence in the skills or mystical powers of hunt leaders in the band, or, perhaps, a positive desire for a change of scene. The freedom of movement in composite bands could also serve an important latent function in regulating band size.

So-called anomalous bands are usually based upon particular families and display a variety of structural forms. Such types are characteristic of much of

the northern Arctic and the Great Basin. Steward's (1938) meticulous analysis of the great variation in socio-political structure from valley to valley in the Great Basin stresses micro-ecological differences. Given the extremely low population density, some of the variability might also be explained in terms of reproductive randomness, such that one generation might produce a surplus of sons, another of daughters; there might be great variations in birth order; the effects of infant mortality and other premature deaths might be magnified in altering the social composition of the local group. The results of these factors can be viewed as analogous to the effects of random genetic drift in small breeding population.

Probably the principal difficulty with the taxonomic category of band is that the term has also been used to designate components of larger taxonomic entities. Thus the Pawnees were historically known to comprise at least four separate and politically autonomous bands. The Pomo consisted of at least six linguistically differentiated sub-groups. The Cheyenne Nation was composed of separate bands that assembled in the summer to form the great camp circle for the collective buffalo hunt, annual religious ceremonies, and political deliberations. The North Carolina Cherokees, whose population is now pushing 10,000, are officially designated as the Eastern Band of the Cherokees and have long severed legal or political connections with their kin in Oklahoma.

If we understand the band to be an autonomous or semi-autonomous localized political segment of a larger unit that we usually consider to be a tribe or nation or people, then I submit that bands were probably the predominant form of socio-political organization in aboriginal America.

I have always found the topological distinctions between chiefdoms and tribes particularly perplexing. I have painful memories of urgent phone calls from Southeastern archaeologists describing the results of excavations at particular sites and asking me whether they were dealing with a chiefdom or a tribe. It's hard to communicate a shrug over the telephone. The distinctions between tribes and chiefdoms are usually ones of degree rather than qualitative differences. Tribes are said to be more egalitarian, while individuals and lineages are more ranked in chiefdoms; political systems are said to be uncentralized in tribes, while chiefdoms have more mechanisms of centralization. Economic exchange tends to be based on reciprocity in tribes, while chiefs frequently serve as nodes of redistribution in chiefdoms. Both tribes and chiefdoms may possess unilineal descent groups, but the clans and lineages tend to be ranked in chiefdoms. One could go on, but the ultimate test of any topology is its applicability.

In a recent introductory text on political anthropology by Ted Lewellan, the Cheyennes and the historic Iroquois are classified as tribes, while the Kwakiuth achieve the level of a chiefdom (1983:21). As we have indicated, the Cheyennes can probably be considered a tribe, at least for the few weeks of the summer encampment, but the rest of the year they divide up into semi-autonomous bands. It is not clear whether the Iroquois are being evaluated in terms of the League or the component units of the League. Certainly the Iroquois possessed centralized political mechanisms, and chiefly titles were inherited through matrilineages. They, or at least the women, were intensive agriculturalists, and their Iroquois religious system was fairly elaborate. In contrast, the Kwakiuth, despite their strong emphasis on rank and individual rights to titles, names, privileges, and ritual artifacts, generally lacked strong political integration, unilineal descent groups, and intensive agriculture--all criteria supposedly associated with chiefdoms. I could continue and try to force-fit societies that I have personally studied, such as the Cherokees and the Creeks, into the

appropriate taxonomic boxes. However, when all is said and done, I am still not sure whether the Cherokees and Creeks qualify as chiefdom or tribes, and furthermore I don't much care.

Richard Sattler (1980) has published a valuable paper that employs a multi-dimensional taxonomy borrowed from Peter Lloyd's study of political structures in African kingdoms (1965). Sattler compares the Hurons, Caddos, and Muskogees. Some interesting differences are elicited, probably owing to the sensitivity of the dimensions to processual features rather than to formal categories. These three societies are of comparable scale such that a controlled comparison does succeed in drawing out some fine-grained distinctions. However, in general I still remain skeptical of the power of topologies to make valid sense out of such ill-defined units as tribes, chiefdoms, or bands that encompass discrete societies which share so few common qualities, on the one hand, and blend into each other, on the other.

Multi-dimensional taxonomies can be diagramed as matrices. In so doing there is a natural tendency to try to fill all the cells as a reactive kind of logical horror vacuo. Seen from this framework, tribes become matrix-generated residua needed to fill empty cells separating bands from chiefdoms and states. Although tribes fill a logical space in the paradigm, their definition and distinctive features remain problematic. Defining tribes is a little like trying to nail jelly to the wall. Or to quote some lines from my favorite poet, Donald Weismann,

Jelly, he said, and no one got the word,  
Not even gooseflesh in the backdraft.

Jelly was the word as surely as  
a fair ball batted backwards  
Is foul. (1965:13)

I should stop here, but I want to take a closer look at the concept of the tribe.

Let me begin with some assertions certain to provoke my scholarly colleagues and bound to irritate my Indian friends. Tribes are not the primordial political entities we assume them to be. There were no, or at least very few, tribes in the strict sense existing in Native North America before the permanent presence of Europeans was established in the New World. Before throwing rocks, rotten fruit, or up, please hear me out. The argument is that tribes are secondary formations produced by the interaction between complex, stratified, state societies and egalitarian, kinship-based societies. Tribal forms of political structure are the result of the process of history. I wish I could claim originality for these ideas, but they were first presented in a paper by the late Morton Fried delivered at the 1967 Meeting of the American Ethnological Society. Fried later elaborated his thesis in a short monograph entitled The Notion of Tribe (1975). I shall selectively summarize some of the issues raised by Fried and offer my reactions to them in the hope that they will have some relevance to this conference.

Some insight into the meaning of the concept of tribe may be gleaned by briefly examining the etymology of the term 'tribe' comes directly from the Latin tribus, which was originally applied to the three-fold division of the people of Rome. Criteria for membership in these three tribes is unclear. According to Fried (1975:7), the Latin word tribus was used to refer to the

ancient "tribes" of Israel mentioned in the Bible, and it is in this context that the term enters the English language, with the approximate meaning of a group of persons forming a community and claiming descent from a common ancestor. This Biblical association may help explain the frequent early English identification of American Indians with the lost tribes of Israel. To venture a further speculation that should be checked out, the word tribus may also have been used to designate the many barbarian hordes of Europe who chronically threatened and ultimately overwhelmed Rome. Tribus also seems to be cognate with the term 'tribute,' which may have been exacted from and given to barbarian headmen. In the long-term process of interaction and agreements, political power would have become more centralized and consolidated in the barbarian bands, with the result that a tribal political structure would eventually develop. Negotiation could proceed "government to government," as President Reagan liked to say in reference to Federal dealings with Indian tribes.

Some investigators view tribes as separate breeding populations and attempt to see tribal endogamy as a defining attribute. However, as I tried to suggest before, incorporation of alien groups and individuals was frequent in North America as far back as our information goes. Fried (1975:21) cites data collected in 1909 by Kroeber and Waterman showing that over 13 percent of Yurok marriage were with neighboring tribes, a modest statistic that takes on added significance when it is realized that most of these marriages occurred between spouses who spoke totally unrelated languages. Similar notes of tribal out-marriage have been reported elsewhere in North America. It is doubtful then that tribal membership is, or ever was, closely correlated with biology.

Tribes have also frequently been identified as distinctive language groups. Here again the fit is far from perfect, as indicated by the aforementioned Yurok data, by the frequent presence and usefulness of bi-and multi-lingual speakers in tribal communities, and by the fact that speakers of the same language may be members of different tribes. We tend to forget that the source of much of our voluminous ethnographic information on the Kwakiutl came from Boas's principal informant and collaborator, Quesilid or George Hunt, whose mother was Tlingit.

The possession of a collective tribal name seems to be a sine qua non for the identification of a group or a tribe. It is hard to imagine nameless tribes. What would we put on our maps? However, as is well known, the names by which a tribe is known may not be of their own making. The name Cherokee or Tsalagi most probably derives from the Muskoghean term Tciloki, which glosses as 'people of other speech'. While the name Tsalagi has been assimilated by the Cherokees over the past three hundred years, they possess alternate terms for self-reference, such as ani'yunwi, 'people', or ani katuwagi, which has reference to one of the major sacred towns in the East and to the Ketowah Society in the West, and is used by cultural conservatives to refer to people considered to be "real" Cherokees.

Often the names by which a group is known are negative stereotypes imposed by others. As is well known, the name Eskimo is of Algonkian origin and means 'eaters of raw flesh', which bears connotations of wildness and sub-human behavior in much the same manner as steak tartar (incidentally a name for diffuse central Asian peoples) surrounded by slices of bread is sometimes referred to as a "cannibal sandwich." The implicit negative ethnocentrism of the term Eskimo led to its replacement by the term Inuit, which contains the root for 'soul' plus a locative suffix.

Some peoples didn't fare so badly in the origin and meaning of their tribal name. For the edification of our host, Fred Hoxie, I will summarize what is known about the tribal name Crow. The following discussion derives from Fried's distillation (1975:31) of Robert Lowie's primary data. The Crow often referred to themselves as biruke, 'us' as contrasted to others. They also used the term Apsaruke for self-reference. Lowie reported that early French interpreters translated the term as corbeaux, or 'crow'. However, Lowie ascertained that Apsaruke really referred to a "a peculiar kind of fork-tailed bird resembling the blue jay or magpie" that was no longer present in their area. Nevertheless, they seem to have accepted the eponym Crow without any difficulty.

The Lumbee people, who have been seeking Federal recognition as an acknowledged tribe for over a century, make an instructive contrast with the situation among the Crow. One of the problems that has impeded the recognition of the Lumbees has been the failure to link them with a known historical tribe (Blu 1980). Recent unpublished ethnohistorical research by Jack Campisi prepared for the Lumbee recognition case provides fairly conclusive evidence that the Lumbees can be traced back to the Cheraws, and I am hopeful that the Lumbers will soon be recognized by Congress. However, in their long struggle for recognition the Lumbees adopted a series of different names. For a brief interlude they identified themselves as Cherokees of Robeson County, N.C.; some current Lumbees regard themselves as Tuscaroras; they also considered themselves as Siouians in the 1930s. The name Lumbee derives from the Lumber River that flows through their territory. However, the first name that they assumed in their quest for recognition in the late 1880s was the inspiration of a sympathetic amateur local historian who identified them with the Croatsians of Lost Colony fame. This was accepted until prejudiced local whites shortened the name and began to refer to them derisively as Crows. Given their black admixture and the association with Jim Crow, the Lumbees soon discarded the name.

The early ethnologist J. Owen Dorsey once footnoted an Omaha text with a statement that a second Omaha informant, "Two Crows denies this." Edward Sapir (1938) recycled the footnote to indicate that two presumably reliable informants could disagree about the meanings of a particular custom, thus indicating the ultimate locus of culture in the individual. In the cases of the Montana Crows and the North Carolina Crows, one Crow denies this tribal appellation. What's in a name...? Obviously a great deal.

Time, attention span, and my ebbing energy level prevent further summarization and commentary on Fried's important and neglected monograph. There is much more of value contained in it, and I encourage you to consult it. Let me conclude.

I have advocated a binocular vision of how we should view the struggle for political autonomy by Native Americans. We should keep one eye on the nature of traditional Native American political systems as they existed before significant white contact, since these structures conditioned subsequent response. The other eye should be trained on Euro-American political structures and their evolving intervention in native political affairs. When combined in stereoscopic fashion the two perspectives should produce a three-dimensional picture of the historical processes leading to the present situations of tribal political system, including opportunities for and constraints upon the expression of political autonomy. I presented some theoretical approaches derived from political anthropology and attempted to assess their utility in

analyzing Native American political structure. Through a dark looking glass I selectively surveyed certain aspects of aboriginal political structures. I perceived a wide variety of political systems. I then tried to narrow my focus on the tribe, but my vision became blurred. Following Morton Fried, I noted that tribes only came into view after significant native interaction with Euro-American political states.

Tribal political structures became more regularized and comparable through time, and today they constitute the vital organizations through which political action, including the call for increased autonomy, is expressed. However, the Federal Government, especially through the agency of the Bureau of Indian Affairs, continues to exercise considerable direct and indirect power over Native American political life, even to the extent of defining the essential criteria as to what constitutes an Indian tribe. Non-treaty groups petitioning for Federal recognition must prove descent from historically known tribes, must demonstrate continuous identification as Indians, must show that a substantial portion of their membership has continued to reside in a specific geographical area that formed part of its territory from historical times, and they must give evidence of tribal political influence or other forms of authority over its members as an autonomous entity from historical times to the present.

Satisfactory fulfillment of these criteria is a lengthy and expensive matter. The BIA Branch of Acknowledgment currently has a backlog of over one-hundred pending cases. With the present staff size and rate of resolution of cases, it will probably take another fifty years to process submitted petitions. A new bill has been introduced to Congress to expedite the process, but its fate is uncertain at this writing.

I find many of the current criteria used to define Indian tribes to be unduly restrictive. Indeed, many currently recognized tribes would have difficulty fulfilling the BIA criteria. One would like to see Native Americans have a greater self-determining say in ascertaining who is and who isn't an Indian. One would also welcome increased Indian autonomy in more substantive, rather than symbolic, political action. However, I suspect that in the long run the Federal Government will continue to have a decisive voice in defining and determining the type of political structure it did so much to create.

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## THE "MIDDLE GROUND" FOR INDIANS IN THE GREAT LAKES

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On the most obvious level, this paper is an attempt to restructure how historians think about Indian/white politics between 1650 and 1812 in the region the French called the pays d'en haut. This is going to be only the most obvious level because relatively few of you as Indian historians (and hardly anybody else) think about seventeenth and eighteenth century Indian/white politics at all. Nor should you, unless I can convince you that something important was happening there. I am confident, however, that I can persuade you that in the pays d'en haut there emerged a common world of meaning capable of altering our whole view of Indian/white relations.

But while I would like to persuade all of you that this common world existed, I have larger ambitions. Ethnohistorians and American Indian historians, after all, persuade each other of all kinds of things without making much of an impact on the larger academic world of American history, let alone on how Americans think of their past. So on a second level, I am giving a reading of Indian/white relations that is aimed at those American historians who ignore Indian history entirely. I am arguing that interpretations of the processes that transplanted European society into this continent have been fundamentally distorted. Historians have ignored or underestimated the influences of Indian peoples. In terms of politics, particularly imperial politics. I'm contending that Indians had far more to do with how European empires actually worked than any current reading of colonial imperial history would indicate. I would extend the same line of argument to trade and early capitalist expansion, and even to settlement and community formation. Looked at from the pays d'en haut, the continent between 1600 and 1800 takes on a new and startling aspect.

There is, finally, a third level, one that will remain implicit today, to this paper. On this third and most basic level I am addressing undergraduate students, western editorial writers, Indian tribal councils: the larger America outside the academy. The more that I think about it, it is on this level that I began to formulate the project on which this paper is a small part. Several things triggered this. One was the perennial naive, but intelligent, undergraduate question about American expansion -- "But, professor, didn't it have to be that way?" The interrogators are asking isn't the whole unhappy past of conquest less a question of history than of "human nature:" whites wanted the land and Indians were not strong enough to hold it? The only answer, as an historian, that I can give to that question is, "No, it didn't have to be that way, because, in fact, it wasn't always that way. The second source of my concern comes from living in the West where there are still many Indians organized in limited but very real nations that have limited but real power. Indians realizing that they have power and influence and then using it is hard for white westerners to accept. Editorialists regularly reflect their astonishment. To take an easy example, the ghost of Sir Jeffrey Amherst seems to be in telepathic communication with the editorial desk of the Salt Lake City Tribune whenever they need an opinion on an Indian topic. The underlying theme, although now more politely stated, has not changed since Sir Jeffrey's day: When are these

goddamned Indians going to start realizing that they are a conquered people?" My third source comes from watching, and peripherally participating in, Indian politics themselves. What I used to take for Indian politeness, the tendency of sympathetic Indians to try to put things in terms that I could understand by appealing to parallels in the larger society, turned out to be something more. Their attempt to explain things in "white" terms often produced a strikingly original version of "white" society. In explaining Indian actions in "white" terms, Indians partially changed the meanings of these terms. When I understood (or pretended to!) I joined a particular kind of political discourse. This discourse created a politics of agreed upon misunderstandings. And that, in essence, is the theme of this paper and of the much wider middleground that I am about to discuss.

In the mid seventeenth century the French and Algonquians of the pays d'en haut became, courtesy of their common fear of the Iroquois, trading partners and allies. Relatively quickly the boundaries of the Algonquians and French worlds melted at the edges and merged. Although identifiable Frenchmen and identifiable Indians obviously continued to exist, whether a particular practice or way of doing things was French or Indian was, after a time, not so clear. This was not because individual Indians became "Frenchified" or because individual Frenchmen went native, although both might occur. Rather, it was because Algonquians who were perfectly comfortable with their status and practices as Indians and Frenchmen confident in the rightness of French ways, nonetheless had to deal with people who shared neither their values nor the assumptions about the appropriate ways of accomplishing tasks. They had to arrive at some conception of suitable ways of acting; they had to create what I will call a middleground.<sup>1</sup>

The creation of the middleground involved a process of mutual invention by both the French and the Algonquians. This process passed through various stages of which the earliest is at once the most noticed and the least interesting. It is in this initial stage that the French, for example, simply assimilated Indians into their own conceptual order. Indians became sauvages and the French reduced Indian religion to devil worship and witchcraft. Algonquians, for their part, thought of the first Europeans as manitous. On both sides new people were crammed into existing categories in an almost mechanical way.<sup>2</sup>

In the pays d'en haut, however, this initial stage did not last. Indians and whites could not deal with each other as abstractions. For here actual Indians and whites of widely different social class and status had to rely on each other for food, furs, mutual protection, sexual gratification, and numerous other desires of everyday life. When tested against everyday human reality, categories like manitou and sauvage failed to produce expected results.

The middleground arose quite naturally from Algonquian and French attempts to follow normal conventions of behavior in a new situation. Each side tried to get the other to behave in comprehensible ways. French officials and merchants sought to rationalize and order what they saw as the unpredictable world of the sauvage. Algonquians sought, in a sense, the opposite. They wanted to change or readjust the given order by appeals for personal favor or exemption. In much the same way that they sought special power to readjust the order of the world of plants, animals, and spirits by appealing to the manitous, so they sought beneficial changes in the social world by appeals to the French. Many times over the century and more of the French alliance, the French sought hard and fast rules. The Algonquians sought the "power" that

comes from knocking the order off balance, from asserting the personal, the human exception, by asking for "pity." The result of each side's attempts to apply their own expectations in a new context was often cultural change. In trying to maintain their conventional order of the world, each side applied rules which gradually shifted to meet the exigencies of particular situations. They both changed their own expectations and found themselves trying, when necessary, to meet the expectations of others. The result of these efforts was a new set of common conventions.<sup>3</sup>

The middleground grew with these common conventions, but its maintenance always depended on the inability of either side to gain its ends through force. The ability to apply force limits the domain of the middleground; when unable to coerce compliance, people attempted to find other means to gain the cooperation or consent of foreigners. To succeed, those who operated on the middleground had to attempt to understand the world and the reasoning of others and to assimilate enough of that reasoning to put it to their own purposes. Perhaps the central and defining aspect of the middleground was the willingness of those who created it to justify their own actions in terms of what they perceived to be their partner's cultural premises. They sought congruences. The congruences arrived at often now seem, and indeed are, the result of misunderstandings or accidents. Indeed, to later observers the interpretations offered by members of one society for the practices of another can appear ludicrous. This does not matter for any congruence can be put to work as long as it is accepted by both sides. It no more has to be true to be effective than does a legal precedent. It only has to be accepted.

In terms of politics, the cultural congruence upon which Algonquian villagers and French imperialists grounded the French-Algonquian alliance was patriarchal kinship. The French and the Algonquians agreed to act as if the French King was a father and the Algonquians were children. In this system all Frenchmen in position of authority were "fathers," all Algonquians within the alliance were the "children" of Onontio, the French governor, and beyond him, the Great Onontio, the French king. All Algonquians within the alliance were thus "brothers and sisters."<sup>4</sup>

Just because Algonquians and French agreed to conduct their political relationship in terms of a patriarchal alliance in which the French acted as fathers and Algonquians acted as children did not, of course, mean that they agreed on what it meant to act like a father and what it meant to act as children. For the French all authority was patriarchal, from God the Father, to the King, the father of his people, to the father in his home. Fathers commanded; children obeyed. The Algonquians understood the relationship somewhat differently. A father was kind, generous and protecting. A child owed a father respect, but a father could not compel obedience. In establishing a middleground one took such congruences as one could find and sorted out their contradictions later.<sup>5</sup>

To work, the French alliance had to engage in a constant renegotiation of meaning on the middleground. Let me give an example here. In 1706 a complicated intertribal quarrel at Detroit resulted in the death of 3 Frenchmen (including a priest), 30 Ottawas, 50 Miamis, and an unknown number of Huron-Petuns. It was the Ottawas, the eldest brothers in the alliance, who had killed the Frenchmen. The deaths threatened a war that no one wanted. To the French such "a war...can cause only considerable expense, the loss of a nation that has served us faithfully, and, in addition to that, a considerable trade every year..." The Ottawas, cut off from trade goods, impoverished and

driven from their fields, found that "all the land was stupefied, and want had taken possession of our bones." Settling the conflict was, for a variety of reasons I don't have time to go into, far from simple. The negotiations to resolve the killings would, according to Governor de Vaudreuil, be one of the most important affairs in the history of the upper country.<sup>6</sup>

Many of the matters at issue in these negotiations revolved around questions of the proper way for a father (the French) to act toward his errant sons (the Ottawas). At Quebec in the fall of 1706 and the spring of 1707, de Vaudreuil insisted on phrasing the alliance and Ottawa obligations in terms of Christian patriarchy. The governor, taking onto himself the highest fatherhood available, demanded that the Ottawas appear before him as penitent sinner appears before the Christian God. The customary Ottawa compensation for the dead was inadequate and inappropriate.

I am a good father and as long as my children listen to my voice, no evil ever befalls them... It is not belts that I require, Miscoquaky, nor presents when my children have disobeyed me and committed such a fault as yours; the blood of Frenchmen is not to be paid for by beaverskins. It is a great trust in my kindness that I demand; a real repentance for the fault that has been committed, and complete resignation to my will. When your people entertain those feelings, I will arrange everything.<sup>7</sup>

The Ottawa response to these demands, in the usual manner of the middleground, was to seek cultural congruence. They, too, focused on patriarchy, but of a different kind. Otontagan (or Jean le Blanc), the Ottawa Sable chief who came to Quebec the next summer admitted his guilt (even though he had, in fact, tried to save the Recollect Priest). Otontagan's major concern was to get Governor de Vaudreuil to act like an Ottawa, not a French father. He stressed de Vaudreuil's beneficence. De Vaudreuil certainly had the power to kill him, but "I have nothing to fear because I have a good father." Since de Vaudreuil had specifically rejected covering the dead with gifts, Otontagan concluded that he must want the dead raised up by giving captives to replace them. The delegation accordingly brought two adopted captives to give de Vaudreuil "to bring the gray coat again to life." De Vaudreuil held out for a sterner patriarchy. He demanded the head of Le Pesant, the Ottawa leader who led the killers, because "the blood of French is usually repaid among us only by blood."<sup>8</sup>

The resolution of this particular dispute over the meaning of patriarchy and the relation of French fathers to Algonquian children was a staged historical drama. Le Pesant surrendered at Detroit. This was an event so unprecedented that La Mothe Cadillac, the commander at Detroit, could only compare it to the arrival of the Doge of Genoa in France. The Ottawas treated Le Pesant's surrender as if they were giving a slave to raise up the dead. This was an extraordinary concession--Le Pesant was a powerful man and not a slave--but it was culturally comprehensible. The French accepted his surrender as that of a murderer, but they did not press the issue. The problem was what to do next. To punish Le Pesant would ruin everything; but not to kill him would outrage the Miamis and Huron-Petuns to whom the French had promised his death. Le Pesant himself was nearly seventy years old. His name translates as the fat one, and he was notoriously obese. The night of his surrender he escaped. That a seventy year old fat man whose surrender had been the object of French policy in the pays d'en haut for more than a year could escape past sentinels in

a French fort on the first night of his captivity while his own Ottawa escort remained behind strained credibility. Cadillac's own explanation was that Le Pesant had lost a lot of weight lately. Le Pesant returned home. His surrender and escape had allowed a French patriarchy and an Ottawa patriarchy to be reconciled and to endure.<sup>9</sup>

The maintenance of the French alliance involved constant renegotiations of this sort, but gradually during the eighteenth century both sides established relatively clear ideas of the conventions of the alliance, which is to say of the duties of French fathers and Algonquian children. Over time both sides, for their own purposes, came to justify their actions in terms of the other sides interpretations. Thus in 1730 the French governor of Canada and the intendant explained to the French minister why the outlay for Indian presents was so high:

You know, Monseigneur, that all the nations of Canada regard the governor as their father which, in consequence, follows their idea he ought at all times give them what they need to feed themselves, clothe themselves and to hunt.<sup>10</sup>

It was in the midst of this mixed reasoning that the alliance itself emerged as a complicated amalgam of French leadership and Algonquian forms and practices. Although the French headed the alliance, the alliance itself was largely Algonquian in form and spirit. It demanded a father who mediated more often than he commanded, who forgave more often than he punished and who gave more than he received. It was an alliance that frustrated the French even as it preserved Canada for at contradicted all the expectations of imperialism and Christian patriarchy. The French longed for, and sporadically tried to create, an alternate form of alliance that was a simple extension of the French state rather than a union of French fathers and Algonquian children. They failed.<sup>11</sup>

What the French obtained, however, was substantial. This was the alliance that cowed the Iroquois and repeatedly fought the far more numerous English to a standstill. The imperial alliance existed as an instrument of containment. Its aim was to restrict English colonization and to protect the vast domain that the French king claimed but could not hold alone. In times of peace Algonquian warrior-hunters stalked beaver and deer rather than enemies of the Great Onontio, but by the eighteenth century the fur trade of the pays d'en haut itself became more important to the French government as a way of holding Algonquian loyalty than as a means of obtaining furs.<sup>12</sup>

This eastern face of the janus-faced alliance too often is the only one that appears in histories of the eighteenth century, but by itself it is incomplete and indecipherable. To explain why Algonquian warriors responded when Onontio summoned them, it is necessary to examine the other face of the alliance. Facing west Onontio and his chiefs - French and Algonquian - ideally carried the calumet not the hatchet. They sought to cover the dead, not to avenge them. Onontio was a benefactor. He mediated the quarrels of his Algonquian children. He supplied their needs with presents and trade. Only when faced with disobedient children - such as the Fox - did Onontio appear armed and angry. Accompanied by his other children, he came to scourge those who "embrouillent la terre" - embroil the land - but even here his only goal was ostensibly to reimpose the peace that allows his children to hunt, to farm, and, in the actual language of the councils, to smoke peaceably on their mats.

These are, of course, theatrical images, simplifications of a more tangled reality. Algonquians did not fight simply from loyalty to their father; the French sought more in the West than an arena in which to exercise their patriarchal benevolence. The faces connect. Between them - their common mind in a sense - is the middleground where the politics of the village and those of the empire meet. Here where French officers, traders and missionaries met village elders, war leaders, and shamans the tangled politics of village and empire merged. And as often as not, the politics of the villages determined the course of events.

The people who encapsulated this complex merging of village and imperial concerns were those described by the most ambiguous of words: chiefs. There were both French chiefs and Algonquian chiefs, and in a manner congruent with the nature of the alliance and the middleground, neither side had complete control over the naming of chiefs. The chief was a person who, by definition, had to operate within both societies. Chiefs were mediators; chiefs maintained the alliance. As mediators they had to be recognized and supported by their father, Onontio, who gave them medals as marks of their office and supplied the gifts that they redistributed to their people. But Onontio could not create chiefs from nothing. He could not elevate people who lacked standing in their own society. Onontio instead recognized as chiefs those who already had stature, and most often he recognized those nominated by the villagers themselves. An example, from the Ottawas at Michilmackinac explains how this system worked. In 1740 the Ottawas de la fourche relayed by their speaker the talk of Nagach8o, a medal chief who died on an expedition against the Chickasaws. Negech8o spoke from the grave.

My father has always had pity on me during my life, and although I am dead, I am not entirely dead. I have left a second of myself at Michilmackinac before departing; he holds my place. This is my brother, Cabina. I hope that my father will have the same care of my younger brother that he had for me. I think that my brother will listen to the word of my father as I have always done.<sup>13</sup>

The elders in effect here were recognizing Cabina (who as the brother of Nagech8o was first in line to succeed him as head of his patrilineage) as the legitimate successor of Nagach8o. They used the dead Nagach8o to request a medal for Cabina. Leadership positions thus remained under Ottawa control, but French validation was necessary to obtain medals and presents. Just as La Fourche had named Nagach8o as his successor, so Nagach8o named Cabina and the elders recognized him. Governor Beauharnois' role in legitimating this transfer of authority was perfectly suitable for a chief was to act on the middleground. His duty was to maintain the alliance. Beauharnois followed the recommendation of the elders. He gave Cabina a medal.<sup>14</sup>

This patriarchal alliance based on a cultural middleground became the theme against which both Algonquians and Europeans played variations from 1700 until 1812. The variations took two major forms. The French, and after them the English, attempted to create chiefs who would parallel French men of authority. They would become agents of the French state and would act as governors of petty principalities. Indians would become subjects. The forms of the alliance would be maintained but the meaning would be transformed.<sup>15</sup>

The Algonquian variation took the form of intertribal villages that the French called republics. Republics were patricidal. Indian brothers and sisters maintained the ideal of the alliance - mediation, unity, reciprocity - but

eliminated the father. They were bands of brothers who would exist not within empires but between them. Republics in the Ohio and Wabash country during the 1740s and 1750s grew within the husk of the alliance itself. For it was the very success of the alliance in maintaining peace, promoting peaceful migration, and cultivating common interest that allowed republics to grow.<sup>16</sup>

The very existence of republics and the much less successful French attempts to instill subordination indicate the dynamic nature and the inherent tensions of the political middleground. The alliance underwent periodic crises, but these crises in fact make the larger point. In actual empire the politics of the village - the rivalries of republicans and alliance chiefs, of different village factions, of French traders and Algonquian hunters - intersected with the politics of empire: the struggle between the English and French. Influence flowed both ways. Village crises could become imperial crises; imperial conflicts could initiate struggles in the villages. Republicans, French imperialists, and alliance chiefs all recognized the intersection of village and imperial politics.<sup>17</sup>

The cession of Canada did not end this politics of the middleground although the British did, in fact, attempt to reduce the Algonquians to subjects and to dictate to them. General Jeffrey Amherst's vision of the pays d'en haut was simple: the indians were conquered subjects of the English empire. The politics of villages no longer mattered. Only the politics of empire counted. As General Thomas Gage put it "All North America in the hands of a single power robs them of their Consequence, presents and pay." It was a view William Johnson and George Croghan, who wished, at least initially, to imitate French policies, warned against to no avail.<sup>18</sup>

It is in this context that Pontiac's Rebellion becomes not the ultimate racial showdown that Parkman imagined, nor the rebellion of a patriot chief, nor the jealous scheming of a minor chief that appears in much newer literature. Pontiac's Rebellion, instead, was an attempt to restore the middleground by restoring French fathers. Ironically, Pontiac, defeated in an attempt to secure the restoration of his French father, helped to turn the English into fathers. But Pontiac's own success caused the British to treat him as a more powerful chief than any Algonquian could be. In the end they treated him like a minor potentate, and he made the mistake of believing them. He died, murdered in the Illinois country, not because he resisted the English. He died because he placed too much on his connections with the English. Pontiac was a warrior who restored the alliance, but who aspired to be a greater chief than the Algonquians would recognize. Pontiac died a victim of the contradictions inherent in the middleground. He killed Englishmen, and he made them his father. His father exalted him, and by exalting him, killed him.<sup>19</sup>

Following Pontiac's Rebellion, the British abandoned their pretensions of conquest and attempted to create an alliance modeled after the French alliance. They initially failed because the British crown proved unwilling to accept the costs of patriarchy, and, even more tellingly, because the middleground of everyday life was so narrow. British officers, settlers, missionaries, and traders by and large lacked the long familiarity of the French in face to face relations with Indians. The French and Indians of the pays d'en haut, as George Croghan remarked, had been "bred up together like Children in that Country, & the French have always adopted the Indians Customs & manners, Treated them Civilly & supplied their wants generously." Or, as General Thomas Gage put it, the French had become "almost one people with them." The British lacked an equivalent history, and Sir William Johnson feared that contact between Indians

and whites would breed only conflict. He unsuccessfully tried to make such contact as restricted and supervised as possible.<sup>20</sup>

A British alliance equatable with the French alliance only arose during the last years of the revolution. The British need for Indian allies finally overcame imperial parsimony. A resurrected system of presents, alliance chiefs, and mediation arose in the pays d'en haut. Just as significantly, a group of British traders, ex-captives, and missionaries gradually duplicated the older common social world of the pays d'en haut. How thoroughly British officers assimilated not only the form but the logic of this common world is revealed in the complaints of General Allan Maclean at Niagara who expressed his complaints of American attempts to negotiate with Indians following the Revolution as an old Highland patriarch - or as the father of an Indian alliance.

The Indians get this day from the King's Stores the bread they are to eat to morrow, and from his magazines the clothing that covers their nakedness; in short, they are not only our allies, but they are part of our Family; and the Americans might as well (while we are in possession of these Posts) attempt to seduce our children & servants from their duty and allegiance, aa to convene and assemble all the Indian Nations without first communicating their intentions to His Majesty's Representatives in Canada.<sup>21</sup>

This reconstituted middleground made its last stand in the Indian confederacies of the late eighteenth and early nineteenth centuries. Joseph Brant, Tecumseh and the Prophet were as much its products as was Pontiac. They all arose from a world that had been shared by Indians and whites and dominated by neither for a century and a half. The Americans denied the possibility of the continuance of such a world. Indian haters allowed no future to Indians at all, and the most benevolent of Americans insisted on, and could impose, a patriarchy where, at last, father would know best.

In the pays d'en haut the political middleground died with Tecumseh. From that time forward, whites no longer had to appeal to Indians to get what they wanted. They could appeal to force. But for more than a century and a half this had not been the case. A world where the actions of villagers could shake empires, where goods had flowed outward from metropolitan cores to village peripheries, where Indian forms and rituals had become the common discourse of European political agents and officers had evolved and prospered. It was a world in some ways rapidly forgotten, but in other ways it has remained embedded in the language, forms, and ideas of even American Indian policy. And it may be undergoing a strange resurrection today.

## NOTES

1. For "Frenchified" Indians see Le Mothe de Cadillac, Report of Detroit in 1703, Michigan Pioneer and Historical Collections, 33:166. For French as "sauvages:" Duchesneau to M. de Signelay, 10 November 1679, NYCD 9: 133-34; Denonville a Seignelay, 13 November 1685, AN C11A, vol 7; Champigny Memoire, 10 Mai 1691, AN, C11A, vol. 10. Denonville to Seignelay, January 1690, NYCD, 9:442-43. Relation du Voyage de Cavalier De La Salle, du 22 Aout 1680 a L'Automne de 1681, Margry, Decourvertes, 2:133.

The impossibility of considering any society in isolation is one of the major themes of Eric Wolf in his recent Europe and the People without History (Berkeley: University of California Press, 1982), 3-23, 385. It is also a position taken by Anthony Giddens, A Contemporary Critique Of Historical Materialism (Berkeley: University of California Press, 1981), 23-24.

2. For books that deal with this initial stage see, Bernard Sheehan, Savagism And Civility: Indians and Englishman in Colonial America (Cambridge: Cambridge University Press, 1980), Cornelius Jaenen, Friend and Foe.

3. A useful discussion of these processes is found in Roy Wagner, The Invention Of Culture (Chicago: University of Chicago Press, 1981), 1-70. Attempts to get around the problem of a confining model of a basic static structure coupled with an ephemeral history has been most thoroughly discussed in Anthony Giddens, Central Problems in Social Theory: Action, Structure, and Contradiction in Social Analysis (Berkeley: University of California Press, 1979), The Constitution Of Society (Berkeley: University of California Press, 1984). It has simultaneously emerged in anthropology, see Marshall Sahlins, Islands Of History (University Of Chicago Press, 1985).

4. That according to other systems of reckoning relations, the Algonquians were grandfathers, cousins, and nephews to each other was not inconsistent. Politically, kinship terms signified reciprocal relations and duties analogous to the relation in question; that members of one village were in one context as grandfathers to the people of another village while in another instance as brothers, did not cause confusion as long as the contexts were kept straight.

5. For differences in how the Great Lakes Indians and the French perceived the relationship between parents and children, see: Fr. Gabriel Sagard, The Long Journey to the Country Of the Hurons (Toronto: Champlain Society, 1939, Facsimile Edition, Greenwood Press, 130-31; Pierre de Charlevoix, Journal of a Voyage to North America (London: R and J Dodsley, 1761, Readex Microprint Facsimile Edition, 1966) 2:55, 89-90, 109, 114-5; Lafitau, Customs, 1: 362; Perrot, Memoir, 1:67; Thwaites (ed), Lahontan's Voyages 2: 458; Jaenan, Friend and Foe, 94-95.

6. For quotes, De Vaudreuil to Pontchartrain, Nov 4, 1706, WHC 16:242; Words of Ottawas to Cadillac, Sept 24, 1707, MPHC 33:349. For difficulties, Marest to Vaudreuil, Aug 14, 1706, MPHC 33:262-69; Council with the Ottawas, Speech of de Vaudreuil, June 20, 1707, Sheldon, Early History, 242. Cadillac to de Vaudreuil, Aug 27, 1706, ibid. 228-29. For importance of negotiations, see de Vaudreuil to Marest, n.d. (1707), Shelton, Early History, 273.
  
7. Reply of de Vaudreuil to Miscouaky, Nov 4, 1706, MPHC, 33: 295.
  
8. For Otontagan, De Vaudreuil to Minister, July 24, 1707, MPHC 33:328-29; Council with Ottawas, June 18, 1707, Speech of Jean de Blanc, Sheldon, Early History, 233-39. For De Vaudreuil's position, see ibid., June 20, 1707, 242.
  
9. De Vaudreuil to Minister, Oct 1, 1707, MPHC, 33:355-58; Words of Ottawas to Cadillac, Sept 25, 1707, MPHC 33:348-50.
  
10. Beauharnois et Hocquart au Ministre, 15 Oct 1730, AN, C11A, vol 51, f. 33-36. This same logic could work the other way. Illinois Indians who were "of the prayer" (Christian) succeeded in having a Frenchman who had murdered another Frenchman pardoned by appealing to the Christian doctrine of mercy and forgiveness.
  
11. For demands for severity and obedience, Rouille to La Jonquiere, May 4, 1749, IHC 29:87-88, ibid Nov 12, 1749, IHC 24:124-25.
  
12. W. J. Eccles makes this argument effectively in "The Fur Trade And Eighteenth Century Imperialism," William and Mary Quarterly 40 (July 1983), 341-62.
  
13. Eagerness for medals, Beauharnois au Ministre, 25 Septembre 1727, AN, C11A, vol 94. Beauharnois au Ministre, 19 Oct 1734, AN, C11A, vol 61, f. 325. Paroles des Outa8acs de Missilimakinac de la Bande de la fourche, 6 Juillet 1740, AN, C11A, vol 74, f, 16. For examples of medals to help secure warriors, Reponse au Memoire du Roi, 13 Oct 1735, AN C11A, vol 63.
  
14. ibid. This same logic of mutual recognition could work in the other direction. On at least two occasions, the Algonquians forced the French to replace the commanders at Detroit because these men did not act as chiefs should.
  
15. For an early French symbolic attempt at transforming a chief into a ruler, see La Otherie, Histoire, 4: 234-35. For typical French longing for subordination, Beauharnois au Ministre 17 Sedptembre 1743, AN, C11A, vol 78, f,

16. For an account of some of these mixed villages, see Celoron, *Journal de la Campagne, Margry, Decouvertes* 6:666. For Iroquois recognition that these republics were beyond their own and French control, Conference of ... Jonquiere with the Cayagas, 15 May 1750, NYCD 10: 205-09.

17. Examples of village struggles that influenced the course of empire are the rise of Onontony among the Wyandots, La Damoselle among the Miamis, and the republic of Sonnontio on the Ohio. I discuss all of these in a current work in progress.

18. See Amherst to Johnston, Sept 11, 1759, JP 3:136; Amherst to Bouquet, June 7, 1762, Amherst Papers, reel 33; Gage to Gladwin, Feb 19, 1762, Gage Letterbooks, Clements Library, University of Michigan. Croghan to Johnson, 25 Jan 1760, JP 10: 134. Johnson to Earl of Egremont, May 1762, JP 10: 461.

19. The literature I have in mind here includes, Francis Parkman, History of the Conspiracy of Pontiac (New York: Book League of America, 1929); Howard Peckham, Pontiac And the Indian Uprising (Princeton University Press); the chapters on Pontiac in Wilbur Jacobs, Dispossessing the American Indian: Indians and Whites on the Colonial Frontier (New York: Charles Scribner's Sons, 1972), 75-103. For the more recent, reduced Pontiac, Michael McConnell, "The Search For Security: Indian-English Relations in the Trans-Appalachian Region, 1758-63," Ph.D. Dissertation, William and Mary, 1983.

For Pontiac's increasing arrogance and his decline, Cole to Johnson, June 23, 1766, JP 5:278-79; Response de Pondiac ... 10 May 1768 in Turnbull to Gage, June 14, 1768, Gage Papers, AS 77. Journal of Transactions and Presents given to the Indians from the 28th of December, March 29-30, 1769, April 20, 1769, Gage Papers. Jealousy, Roberts to Johnson, 23 June 1766, JP 5:279; MacLeod to Johnston, August 4, 1766, JP 12:150; Hay to Croghan, August 28, 1767, JP 5:644; Hay to Croghan 22 August 1767, JP 5: 637-38.

20. Imitation of French, Johnson to Lords of Trade 20 Oct 1767, NYCD 7:988. For English concern over expense, Gibson, *British Empire*, 11:433. For examples of Johnson's efforts to divide Indians, Johnson to Gage, 19 September 1771, JP 8: 258-62. Johnson to Gage, Sept 2, 1772, JP 8:586. Groghan to Johnson, November 1765, IHC 11:53-54; Gage to Hillsborough, Nov 10, 1770, Carter (ed), Correspondence of Thomas Gage 1: 275.

The clearest signs of this policy are Johnson's trade regulations restricting trade to forts where officers could supervise it, and his attempt to establish a clear boundary between Indian and English lands.

21. MacLean to De Peyster, 8 July 1783, MPHC 20: 139.

BLOOD OF MARTYRS; BLOOD OF INDIANS  
Toward a More Balanced View of Spanish Missions  
in Seventeenth-Century North America

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In 1573, following a failed Jesuit attempt, Franciscans began to preach in Spanish Florida. During the first three decades they made little headway, but then progressed rapidly. Guales and Timucuan along the Atlantic coast from the Carolinas south to St. Augustine; westward from St. Augustine an inland mission trail ran through Timucuan territory to the Apalachee country around present Tallahassee. By 1675, a century after they had begun, Franciscans had extended that inland trail still farther west into what is today southwestern Alabama and southwestern Georgia. There, over 250 miles west of the main base at St. Augustine, Franciscans briefly insinuated themselves into villages of Chacatos and Apalachacolas--peoples the English would later call Choctaws and Lower Creeks.

Meanwhile, far across the continent, Franciscans enjoyed similar success at planting missions among Pueblos in New Mexico. Arriving in 1598 with Juan de Onyate, Franciscans began to build permanent missions in New Mexico later than they did in Florida. In just over three decades, however, they established themselves in every substantial Pueblo community, from the Piro pueblo of Socorro in the south to the Tiwa pueblo of Taos some 200 miles in the north, and along an east-west axis that ran nearly 300 miles from the Hopi villages in the west to Pecos and Abo to the east.<sup>1</sup>

On the southern fringes of North America, then, a small number of Spanish preachers made rapid inroads into the communal and individual lives of large numbers of natives in the seventeenth-century. It was a remarkable achievement. Alone, or with the aid of a single companion and a small military escort, a Franciscan moved into an Indian community and persuaded its residents to construct a temple to an alien god. Among peoples whose largest enclosed public spaces had been circular kivas or council houses, the Franciscans oversaw the construction of small, rectangular, fortress-like churches. These conquistadors of the spirit, whose number seldom exceeded fifty at a time in either Florida or New Mexico in the 1600s, wore no armor and carried neither gun nor sword.<sup>2</sup> Nonetheless, they persuaded numerous Indians not only to participate in Christian rituals but, at the very least, to take on some of the external attributes of Spanish Christians.

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How have historians explained and assessed the rapid thrust of these opening salvos in the Spanish Franciscans' two-and-a-half century offensive against paganism in North America? The answer has varied over time. Through much of this century, historians saw the Franciscans' penetration of Indians' worlds largely in Franciscan terms. Few historians would explain missionary expansion as the work of divine providence as the friars did in the 1600s, but historians have generally adopted the Franciscans' view that, supernatural forces aside, friars themselves were responsible for evangelical advances. From the Franciscans' viewpoint, and that of historians sympathetic to them, the hard work, self-sacrifice, skill, and energy of the missionaries had overcome the resistance of obdurate, slothful, and ungrateful savages. Moreover, historians

have generally emulated Franciscans in not lingering over disturbing questions about the morality of evangelism.<sup>3</sup>

A passage from the writing of Maynard Geiger, a Franciscan historian who in the late 1930s chronicled his confreres' achievements in seventeenth-century Florida, succinctly suggests the motif. Geiger portrayed the Franciscans as hardy "pioneers."

Urged on by apostolic zeal, imbued with love for the least progressive of their fellow-men, at times even thirsting for martyrdom, they left the cultural ties of their homeland for mainly toil on a cheerless frontier. Often they met scenes dismal and disheartening; people barbaric or savage; primitive agriculture and housing; undeveloped intelligence; a crass morality. The situation was faced with laudable fortitude. True religion was taught, and Christian morality instilled; the wilderness was cleared; homes and houses of worship were built, and schools established; domestic animals were introduced, and agriculture was begun or improved. The missionaries studied the native languages and cultures ... in order to endear themselves to their rude neophytes.<sup>4</sup>

No murky cultural relativism clouded Geiger's vision--or that of most other North Americans interested in missions in his day. As a Franciscan, Geiger might, of course, be expected to laud the achievements of his predecessors, but his views fitted comfortably into the mainstream of mission historiography in his day.

Dominating that mainstream was the first generation of historians of the so-called Borderlands school, inspired by Berkeley historian Herbert Eugene Bolton (whose disciples included two influential Jesuits Peter Masten Dunne and John Francis Bannon).<sup>5</sup> In their effort to break down negative stereotypes of Spaniards, the early Boltonians exalted and romanticized Spaniards in general and missionaries specifically. Ironically, the Boltonians failed to question stereotypical views of Indians as benighted, if not bedeviled and malevolent.<sup>6</sup>

Bolton himself set the tone in his classic essay, "The Mission as a Frontier Institution in the Spanish American Colonies," published in 1917. He made the important point that the mission, previously viewed solely as a religious institution, had the fundamental secular goal of advancing, defending and, as he put it, "civilizing" Spanish frontiers in the Americas. While acknowledging that "the missions did not, in every respect, represent a twentieth-century ideal," and noting that "sometimes, and to some degree, they failed, as has every human institution," Bolton judged the missions a great success--"a conspicuous feature of Spain's frontiering genius."<sup>7</sup>

The theme of Christophilic triumphalism dominated the abundant American scholarship on North American missions prior to the mid-1960s. In the view of historians such as Carlos Castanyeda, the padres carried "the light of Christianity and the comforts of civilization to the untutored children of the forest ...."<sup>8</sup> The padres, John Tate Lanning argued, brought "comfort and the most softening influence" to the "miserable life" of the "American aborigine." In praise of the padres, Lanning noted that "the toleration shown by them is a marvel .... they permitted the Indians to wear long hair."<sup>9</sup> The result of the Franciscans' tolerant efforts, these historians asserted, were a "triumph" and a "success."<sup>10</sup> In the pages of these Eurocentric histories, treacherous Indians often failed to appreciate the padres' triumph and behaved badly. As historian J. Manuel Espinosa put it, "missionary success was ... paid for with the blood of

martyrs."<sup>11</sup> But as Espinosa's comment suggests, even when natives rebelled and made martyrs of the padres, promissionary historians refused to acknowledge missionary efforts as failures. "In mission history every page written with the blood of martyrs is glorious," one historian writing about the Jesuit debacle in sixteenth-century Florida has explained, and "would attract the blessings of heaven for the conversion of natives."<sup>12</sup> Historians who have issued such pious assessments of the value of the blood of missionary martyrs often seem to place little value on the blood of Indians.

In the late 1970s, Jesuit historian John Francis Bannon, a former student of Bolton's, reviewed the literature on missions that had appeared over the six decades since the publication of Bolton's famous essay. Bannon came to much the same conclusion that his mentor had. Some scholars, he noted, had challenged the mission's impact "as a beneficent force," but Bolton's general viewpoint, Bannon argued, remained intact. Whatever the mission's failure, it "may still have been one of the more humane approaches of a conquering people."<sup>13</sup> Bannon's interpretation of the literature put a gloss on a profound shift that had begun to accelerate in the late 1960s. More than Bannon suggested, historians had already begun to move away from Christophilic triumphalism toward a more critical and balanced view of the Spanish missionary process.

Influenced by anthropologists and ethnohistorians and unburdened by the task of whitewashing the Black Legend, a growing number of historians had begun to examine missions from Indian viewpoints, and to question the criteria for measuring Franciscan successes. Some scholars had begun this task long before and represented a strong minority tradition,<sup>14</sup> but certainly from the mid-1960s on, the critics' voices grew louder. For seventeenth-century Florida, for example, Rev. Charles W. Spellman articulated the new interpretive thrust. Decrying the conventional notion that there was an idyllic "Golden Age" of the Florida missions, Spellman wrote

the so-called 'Golden Age' was a time of unrelieved poverty and hardship for the friars, of hunger and want and near-slavery for the Indians, of acrimonious disputes between missionaries and officials, of violent Indian revolts, and of equally violent civil suppressions.... The 'Golden Age' was rather a 'Time of Troubles.'<sup>15</sup>

Some historians, of course, resisted the new current. As late as 1986, for example, ethnohistorian Bernard Fontana chided historians for forgetting that the missionization process "takes place between two parties: the missionaries and those who are missionized. To know one without knowing all we can about the other," Fontana argued, "may provide us with a lot of knowledge but not with much understanding."<sup>16</sup> A one-sided view of the missionary process, however, seems to have fallen from fashion by the 1980s--even among present-day Catholic missionaries.<sup>17</sup>

An inquiry into the dynamics of Franciscan missionization in seventeenth-century North America exemplifies how knowledge of "those who are missionized" can increase our understanding of the entire missionary process. The object of such an inquiry should not be to achieve a more balanced view by weighing the friars' good intentions against their dolorous impact on native communities. Rather than look at Indians as victims, it seems more useful to try to understand the role that they played in determining the scope, shape, and ultimate success or failure of the Franciscans' missionary program. To understand missionized

people is, of course, to raise the elusive "question of the other," that has intrigued our colleagues in literary studies, or the question of how to write the history of a "people without history," that has bedeviled anthropologists and historians alike.<sup>18</sup> For seventeenth-century North America, these questions seem especially intractable because extant sources allow us to enter this world largely through the hegemonic discourse of the colonizers. Few voices of the missionized have endured in printed form; we have no North American counterpart to the eloquent counter-hegemonic discourse of native writers such as Gauman Poma in Peru.<sup>19</sup> Of necessity, then, any effort to reconstruct Indian-Spanish relations in the seventeenth-century missions of Florida and New Mexico must rely to some extent on insights gained from a wide variety of sources, and a strong resistance to the temptation to engage in creative anachronism.

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It seems clear that whatever skill, resources, and force the Franciscans brought to their struggle to extend Christianity to natives of Florida and New Mexico, they did not succeed unless Indians cooperated, and Indians cooperated only when they believed they had something to gain from the new religion and the tangible benefits that accompanied it, or too much to lose from resisting it.

Some natives welcomed missions, calculating that friendly relationships with friars would bring material benefits, such as gifts and access to Spanish trade goods.<sup>20</sup> Others saw the Franciscans as a key to defense against predatory Indian neighbors or predatory Spaniards. Natives often regarded priests as useful intermediaries between themselves and the potentially hostile Spanish soldiers. Indians, Viceroy Antonio de Mendoza reported, "welcome the friars, and where they flee from us like deer ... they come to them."<sup>21</sup> Some natives saw an alliance with the friars as a way to shift the balance of power against enemies from other tribes. In the early stages of Franciscan missionary work in New Mexico, for example, growing pressure from Apaches appears to have driven a number of Pueblos to the friars--just as pressure from Comanches would later drive Apaches to seek missionaries.<sup>22</sup> Thus, natives sought to manipulate missionaries to promote their own security much as the Spanish Crown tried to utilize missionaries to secure its frontiers from native and imperial rivals. When conditions were right, that tactic worked and enabled some native societies to survive.<sup>23</sup>

Initially, at least, submission to the foreign priests also seemed to offer natives access to awesome spiritual power. To some Amerindians, Franciscans may have appeared to be "powerful witches" who needed to be appeased, or powerful shamans with whom it seemed wise to cooperate.<sup>24</sup> Like Christians, many North American Indians believed that priests and ceremonies had power to mediate between man and nature.<sup>25</sup> Franciscans claimed such power as they conjured cures, rain, and good harvests. From the first, several signs of the friars' power were readily evident to Indians. Armed Spanish soldiers and splendidly attired government officials prostrated themselves before the unarmed, plain-robed priests. Franciscans introduced and controlled domestic animals, larger than the natives had previously known, and would provide a steady supply of meat without hunting.<sup>26</sup> Strange diseases that took lives of Indians spared Europeans who followed the Christian god. At first, then, natives had reason to believe that the preachers possessed life-saving powers. The specter of death from mysterious maladies probably persuaded some tribes to request missionaries and some Indian mothers to seek baptism for their children.<sup>27</sup>

The extent to which Indians saw themselves as beneficiaries of relationships with missionaries was, in part, specific to the values of each native society. When Franciscans brought gifts to Pueblos, for example, expecting no tangible gift in return, they put the Pueblos in their debt. In the Pueblo world, the acceptance of gifts implied reciprocity.<sup>28</sup> Franciscan celibacy may have seemed unremarkable to some natives, but probably awed the Pueblos for whom, as one historian put it, "sexuality was the very project of the cosmos."<sup>29</sup> Pueblo males believed that by abstaining from sexual activity for several days they achieved greater strength for the hunt, for curing, or for conjuring rain. What power might accrue to those friars who practiced life-long sexual abstinence!

Economic and environmental conditions also figured into the native's calculations. It seems no coincidence that nomads and semi-nomads, such as Apaches in the Southwest or Chisos in the Southeast, succeeded at retaining their spiritual and physical independence for they could move beyond the Spanish sphere and leave behind little of value at traditional hunting or gathering places.<sup>30</sup> Conversely, Franciscans made their earliest conversions in Florida and New Mexico among agriculturalists, who had the most to lose if antagonized Spaniards burned their villages and trampled their crops--the more so perhaps in New Mexico's unforgiving arid environment. Of course, some town-dwellers, protected from reprisal by distance or natural barriers, managed to retain a high degree of spiritual independence and physical freedom. The Hopis, for example, who submitted to missionaries in 1629, regained their independence in 1680 and refused thereafter to permit a missionary to remain among them. "The religion of the Moqui [Hopi] today is the same as before they heard about the Gospel," lamented one Franciscan who visited their isolated mesa-top villages in 1775.<sup>31</sup>

Natives who decided to accept missionaries after weighing its apparent benefits and liabilities, also determined which aspects of Christianity and European culture they would embrace and which they would reject. As a rule, those native societies that had not been vitiated by war or disease adopted from the friars what they perceived was both useful and compatible with their essential values and institutions. Ideally, they sought to add the new without discarding the old, or to replace elements in their culture with parallel elements from the new.<sup>32</sup> In the religious sphere, for example, many natives simply added the Christian deity to their pantheons and welcomed the Franciscan as another shaman into their community. Guares who had brought offerings of food to mortuary temples now brought those offerings on the Day of the Dead; in place of shell gorgets, they wore religious medals.<sup>33</sup> Pueblos seem to have been incorporated Franciscans, and perhaps even Jesus, into their cosmography as Kachinas, or representatives of mythological beings.<sup>34</sup> In the area of material culture, to take other examples, neophytes added foods to their diet without discarding the old, added metal to the tips of their hoes yet retained their way of farming, and used metal tools for carpentry but did not change radically the method of constructing their own buildings.<sup>35</sup>

However selective neophytes might be in their own aspects of Christianity and Spanish culture, their decision to accept missionaries began to transform their cultures--often in ways that neither they nor the missionaries intended. Adoption of items of European material culture usually brought about profound transformations.<sup>36</sup> By cultivating certain European crops and raising European domestic animals, for example, natives often enriched their diet, lengthened the growing season, deemphasized hunting in favor of agriculture, and made it possible for their villages to support denser populations. Their prosperity also

made them more attractive targets for raids by nomads, and forced them to devote more resources to defense.<sup>37</sup> To take another example, the political and religious structures of some Indian communities fractured as leaders became bitterly divided between those who converted and those who did not. On occasions, factionalism became so bitter that it led to bloodshed.<sup>38</sup> Thus, in ways too numerous to enumerate, but that varied greatly from Indian people to people, acceptance of missionaries and European material goods transformed native economies, politics, social structure, and family life. All neophyte groups found themselves reduced from the status of sovereign peoples to subject populations, occupying one of the lowest rungs on the socio-economic ladder of the new social order.

However profound the direct and indirect transformations effected by the missionary process, it appears that natives, more often than not, successfully resisted the friars' efforts to eradicate or transform their religious beliefs or cultural values. Notwithstanding superficial adjustments made to please the friars or to win the favor of the Christian god, such as participation in Catholic rituals or changes in burial customs,<sup>39</sup> neophytes on the seventeenth-century Spanish frontier apparently retained the integrity of their religions. In some individual cases a synthesis of old and new religions probably occurred--much as Christians in Spain blended elements of pagan and Catholic belief and ritual. More commonly, however, it appears that mission Indians practiced both the old and the new religions simultaneously. Mission Indians did not survive long enough in Spanish Florida to provide testimony to neutral observers of the depth or manner of their conversions, but Pueblos did. To this day, they simultaneously practice Catholicism, through the intermediary of a Catholic priest, and indigenous religious traditions through native priests -- compartmentalizing each religion rather than synthesizing the two.<sup>40</sup>

One can imagine many reasons why neophytes did not succumb so completely to the blandishments of the new religion that they rejected the old. One reason, it seems likely, was that the bright future that Franciscans offered at the outset of the courtship quickly lost its luster. Indeed, the terms of exchange had shifted against the mission Indians. Along with gifts and access to trade goods had come demands for labor and resources, and those demands on individual neophytes increased as Indian populations declined. Obedience to the Franciscans and their god did not stop the spread of diseases strange to the natives. The worlds of the natives continued to collapse. By 1680, the Pueblo population had fallen by at least half, to some 17,000 since the Franciscans' arrival.<sup>41</sup> In Florida, the eastern Timucuan had nearly disappeared by 1680; a Spanish census of 1675 reported that only 1370 remained, most of them west of the Suwannee River. Florida, as one historian has put it, "had become a hollow peninsula."<sup>42</sup> The Apalachees had declined from about 25,000, from their first contact with missionaries early in the 1600s, to some 10,000 by about 1690.<sup>43</sup> Enemy raids, desertions, movement into colonists' communities, and forced labor also diminished the numbers of Indians in missions, but epidemics of smallpox, measles, and other difficult-to-identify diseases appear to have been the principal cause of these rapid population declines.<sup>44</sup>

The prayers of the padres did not shield the natives from these calamities or from other natural disasters. In the semiarid Southwest, years passed when little rain fell upon the land. Crops failed and hunger increased. Crops and livestock proved tempting targets for Apache raiders in New Mexico, and skilled Indian laborers lured English slave hunters to the Florida missions.

In such troubled times it must have seemed to Indian neophytes that Franciscan shamans had lost their magic, or that the Christian god did not have the strength of the old. A story handed down among the Pueblos, originating perhaps at Zuni, tells of a struggle between the Christians' "God" and Poshaiyanyi, a Pueblo deity to whom the Pueblos would turn when they launched a full-scale offensive against the Spaniards in 1680.

God and Poshaiyanyi were going to have a contest to see which one had the most power. They were going to shoot at a tree. God shot at it with a gun and cut a gash in the bark. Poshaiyanyi struck it with a bolt of lightning and split the trunk in half. Next they were going to see which one had the best things to eat. God had a table with lots of good things on it. Poshaiyanyi ate on the ground; he had some fat deer meat and some tortillas. God watched Poshaiyanyi eat for a while, then he got down on the ground and ate with him.<sup>45</sup>

To control the forces of the cosmos, which seemed to have deserted them, mission Indians turned more openly to traditional gods, such as Poshaiyanyi, and to prayers, ceremonies, and priests that had proved efficacious in the past.<sup>46</sup> The friars, however, condemned those traditional religious practices as idolatrous and forcibly denied the natives freedom of worship. Thus, natives learned to their sorrow that Christianity was incompatible with some of their most cherished values and institutions and that their decision to accept baptism was irrevocable.

With the aid of soldiers, Franciscans quashed non-Catholic public religious ceremonies, and intruded into the most private aspects of natives' lives. For example, in every province where they established missions in the seventeenth century--among Pueblos, Timucuans, Guales, and Apalachees, and Apalachicolas--the friars attempted to impose indissoluble monogamy on natives and to end polygamy. In so doing, friars often enraged and humiliated native males who lacked the Christian arithmetic that one wife was better than two or three. Timucuans, who explained to one priest that "they enjoyed their vice and therefore it must be evil but good and just," received an unsympathetic hearing.<sup>47</sup> Among the Pueblos, where sexuality and sanctity were closely linked, the affront to their dignity must have been especially deep.<sup>48</sup> Perhaps, too, the hypocrisy of those Christians who themselves engaged in sexual practices prohibited by their church (including some of the friars), did not go unnoticed by the neophytes.<sup>49</sup>

Oppressed in body and in spirit, many mission Indians sought ways to extricate themselves from the loving embrace of the sons of St. Francis. Strategies varied. Some individuals fled, as did entire communities on a few occasions. Others tried to rid themselves of the priests, surreptitiously through poison (at Taos Pueblo they tried tortillas laced with urine and mice meat), or through some more blatant form of murder.<sup>50</sup> Neophytes also rebelled. Mission Indians rebelled on a large-scale at least once in each of the four mission provinces of Florida, before finally contributing to the complete collapse of the Florida missions between 1680 and 1706. And on a number of occasions Pueblos revolted in New Mexico before their successful rebellion of 1680 drove all Spaniards out of the province. Friars often understood these revolts as the work of the "devil," or as a sign of native ingratitude.<sup>51</sup> The actions of natives, however, who killed Franciscans, mocked Christianity, and desecrated the friars' sacred objects and shrines, make it clear, at least in retrospect, that these

rebellions represented efforts to achieve freedom of religious and cultural expression.<sup>52</sup>

An attempt to understand missions from the points of view of the missionized and those who eluded missionization, implicitly undermines the conventional wisdom that missions represented a triumph or a success. A more balanced view compels us to ask, a success for who?

The Spanish Franciscans who contended with native religions on the seventeenth-century frontiers of North America succeeded when they used as a standard the numbers of souls saved through baptism and in the number of mission communities where natives worshiped as Catholics and lived as Spaniards. By this standard, the deaths of neophytes from European diseases did not diminish the padres' achievements. Franciscans regarded those deaths as a manifestations of God's will and, as one historian has noted, "missionaries would have philosophically preferred dead Christians to live pagans."<sup>53</sup> At a more mundane level of achievement, missionaries and many latter-day historians have argued that the Franciscans succeeded in saving natives from extinction at the hands of Spanish settlers and soldiers.<sup>54</sup>

Whatever they accomplished, however, the friars themselves recognized that they fell far from their goal of weakening the indigenous religions and replacing them with their own. After eighty years of missionary efforts among the Pueblos, for example, one Spaniard complained that "most" of them "have never forsaken idolatry, and they appear to be Christians more by force than to be Indians who are reduced to the Holy Faith."<sup>55</sup> A true synthesis of the belief systems of the natives and the Spanish intruders did not occur in the seventeenth century. Rather, religions and values remained in lively contention with one another. To the extent that the militant Franciscans persecuted native religious leaders and tried to impose religious orthodoxy by force, they drove true believers into secret worship and assured violent resistance.<sup>56</sup> Critics of the missions have compared them to penal institutions and Indian neophytes to inmates, who suffered from pestilence, oppression, brutality, and "near slavery."<sup>57</sup> Critics have questioned the right of missionaries "to invade the most sacred inner precincts of another man's being," and have charged the Franciscans with "religious persecution."<sup>58</sup> They have asked: "If the Indian cultures are extinct is that success?"<sup>59</sup>

The friars also failed to achieve fully their goal of Hispanizing Indians. In retrospect, it seems clear that they could not have done so in an institution that isolated Indians from the larger Hispanic community and in which members of the recipient culture, apparently as dedicated to their own values as Spaniards were in theirs, so vastly outnumbered the missionaries who represented the donor culture.<sup>60</sup> It may also be that the friars did not wish to succeed too well at Hispanizing natives for that would end the reason for a mission's existence.

Finally, missionaries also failed to serve the defensive function that the Crown imagined they would. In Florida and New Mexico, native rebellions proved especially costly. They destroyed not only the missions but, rolled back the entire Spanish frontier. Moreover, as one historian has argued, Spain's "fantasy" of relying on missionaries for Indian control "helped to divert it from establishing realistic defenses."<sup>61</sup>

Whatever their spiritual successes, then, missionaries failed to advance permanently, defend effectively, or Hispanize deeply Spain's North American frontiers of the seventeenth century. Although Franciscans succeeded initially in pushing the edges of Christendom into parts of North America, natives pushed them back. Friars and natives thereby repeated a cycle that had already played

itself out in central Mexico. There, too, the natives' initial indulgence turned to disillusion, estrangement, and finally to resistance in its many forms, including rebellion.<sup>62</sup> In seventeenth-century North American, then, the mission was not, as Bolton argued, a successful "frontier institution." Rather it represented a frontier failure, in large part because Indians did not wish it to succeed. In the eighteenth century, when the Crown abandoned its excessive dependence on missionaries, and relied more on soldiers to advance and hold her North American frontiers, the mission-presidio complex may have achieved greater successes among those natives who either could not or did not want to resist the increased force that Spain brought to bear upon time.

## NOTES

1. The most accessible narration of these events, and a convenient guide to sources, is Michael V. Gannon, The Cross in the Sand: The Early Catholic Church in Florida, 1513-1870 (Gainesville: University of Florida Press, 1965). There is no specialized overview of the Franciscan missions in seventeenth-century New Mexico, but two works by anthropologists serve as the best points of departure: Edward H. Spicer, Cycles of Conquest: The Impact of Spain, Mexico, and the United States on the Indians of the Southwest, 1533-1960 (Tucson: University of Arizona Press, 1962), and Edward P. Dozier, The Pueblo Indians of North America (New York: Holt, Rinehart and Winston, 1970).
2. The crown apparently authorized as many as 70 friars for Florida, but the actual number usually stayed below fifty (see Matter, "Spanish Missions of Florida," 417-18 (Table 3). In New Mexico, 66 was apparently the highest number authorized in the 1600s, but usually fell short of that (Scholes, Troublous Times, 9).
3. In saying the Franciscans "did not linger over such questions," I do not mean to imply that they did not raise them. See, for example, Phelan, Millennial Kingdom, 9-10, and Sabine MacCormack, "'The Heart Has its Reasons': Predicaments of Missionary Christianity in Early Colonial Peru," Hispanic American Historical Review 65 (August 1985): 443-66, with its fine discussion of the theological questions surrounding the Christian tension between authority and reason.
4. Geiger, Biographical Dictionary of Franciscans in Spanish Florida, 1. See, too, Maynard Geiger, The Franciscan Conquest of Florida (1573-1618) (Washington: Catholic University of America, 1937).
5. A full list of Bolton-trained Ph.D.s appears as an appendix to John Francis Bannon, Herbert Eugene Bolton: The Historian and the Man (Tucson: University of Arizona Press, 1978).
6. A number of writers have commented on this Eurocentrism of the early Boltonians. See Weber, "John Francis Bannon and the Historiography of the Spanish Borderlands: Retrospect and Prospect," in Myth and the History of the Spanish Southwest: Essays by David J. Weber (Albuquerque: University of New Mexico Press, 1988), 60-62.
7. Reprinted in a number of sources, including John Francis Bannon, ed., Bolton and the Spanish Borderlands (Norman: University of Oklahoma Press, 1964), 211.
8. Carlos E. Castanyeda, "The Sons of St. Francis in Texas," The Americas 1 (January 1945): 289. See, too, Pious Barth, Franciscan Education and the Social Order in North America, 1502-1821 (Chicago: n.p., 1950), 376.
9. John Tate Lanning, The Spanish Missions of Georgia (Chapel Hill: The University of North Carolina Press, 1935), 73 & 74.

10. The quotes are respectively from Gannon, Cross in the Sand, 37, and J. Manuel Espinosa, "Our Debt to the Franciscan Missionaries of New Mexico," The Americas 1 (July 1944), 84.

11. Espinosa, "Our Debt," 84.

12. Zubillaga, La Florida, 430.

13. "The Mission as a Frontier Institution: Sixty Years of Interest and Research," Western Historical Quarterly 10 (July 1979). Quotes are, respectively, on pp. 305 and 320.

14. Perhaps the most outspoken critic of the missions was Sherburne F. Cook, whose monographs on The Indian Versus the Spanish Mission and The Physical and Demographic Reaction of the Nonmission Indians in Colonial and Provincial California appeared in 1943, and were reprinted as in The Conflict Between the California Indian and White Civilization (Berkeley: University of California Press, 1976).

15. Charles W. Spellman, "The 'Gold Age' of the Florida Missions, 1632-1674," Catholic Historical Review 51 (October 1965): 355. Spellman's grim picture stands in stark contrast to the interpretation in Gannon, The Cross in the Sand, which also appeared in 1965, and that repeated the myth of the "Golden Age." Spellman's interpretation seems to have prevailed over Gannon's if the work of Robert Matter is an indication. See, for example, Robert Allen Matter, "Mission Life in Seventeenth-Century Florida," Catholic Historical Review 67 (July 1981): 402, and Matter's previously cited dissertation, "Spanish Missions of Florida."

Historians of seventeenth-century New Mexico have also found a "Golden Age," in the first decades of expansion. See, for example, Espinosa, "Our Debt," 84, and Cyprian J. Lynch's introduction to Benavides' Memorial of 1630, Peter P. Forrestal, trans. (Washington, D.C.: Academy of American Franciscan History, 1954), xx. Perhaps because Pueblos repudiated the missionary program so thoroughly in rebellions in 1680 and 1686, New Mexico historians had been less inclined to romanticize the missions. See, for example, France V. Scholes, Church and State in New Mexico, 1610-1650 and Troublous Times in New Mexico, 1649-1670, in Historical Society of New Mexico, Publications in History, vols. 7 & 11 (Albuquerque: University of New Mexico Press, 1937 & 1942) HACKETT REVOLT OF PUEBLO INDIANS 1942. More recent discussions of Franciscan activity in seventeenth-century New Mexico have continued to be quite critical. See, for example, Jack D. Forbes, Apache, Navaho, and Spaniard (Norman: University of Oklahoma Press, 1960), and Elizabeth A. H. John, Storms Brewed in Other Men's Worlds: The Confrontation of Indians, Spanish, and French in the Southwest, 1540-1795 (College Station: Texas A&M University Press, 1975).

16. Bernard L. Fontana, "Indians and Missionaries of the Southwest During the Spanish Years: Cross Cultural Perceptions and Misperceptions," in Proceedings of the 1984 and 1985 San Antonio Missions Research Conferences (San Antonio: LEBEO Graphics, 1986), 55.

17. Louis J. Luzbetak, "If Jun pero Serra were Alive: Missiological-Anthropological Theory Today," The Americas 41 (April 1985): 512-19.
18. In the study of colonial Spanish America, Tzvetan Todorov brought "the question of the other" into greater prominence with The Conquest of America: The Question of the Other, trans. by Richard Howard (New York: Harper & Row, 1982). On the "People without History," a phrase given currency by Eric Wolf, see Thomas E. Sheridan, "How to Tell the Story of a 'People without History,'" Journal of the Southwest 30 (Summer 1988): 168-89, who provides an interesting case study and a fine introduction to this question.
19. Rolena Adorno, Gauman Poma: Writings and Resistance in Colonial Peru (Austin: University of Texas Press, 1986).
20. Most authorities, and most Franciscans of the time, took the view that gifts and trade goods were powerful inducements. See, for example, Hann, Apalachee, 123-33.
21. Mendoza to the King, Jacona, April 17, 1540, in George P. Hammond and Agapito Rey, eds. and trans., Narratives of the Coronado Expedition, 1540-1542 (Albuquerque: University of New Mexico Press, 1940), 161. There are many examples of natives appealing to friars for help. See, for example, Fray Juan Sanz de Leza n, November 14, 1760, "Account of Lamentable Happenings in New Mexico," in Hackett, ed., Historical Documents, 3:477. See, too, James Axtell, "Some Thoughts on the Ethnohistory of Missions," Ethnohistory 29 (1982): 37.
22. John, Storms, 56, suggests this possibility for the years 1607-08, when the Franciscans reported an unusual number of baptisms. See, too, *ibid.*, 258-303.
23. A number of studies have reached this conclusion. See, for example, Frank Hamilton Cushing, "Zuni and the Missionaries: Keeping the Old Ways," in Jesse Green, ed., Selected Writings of Frank Hamilton Cushing (Lincoln: University of Nebraska Press, 1979), 182, and Evelyn HuDeHart, Missionaries, Miners, & Indians: Spanish Contact with the Yaqui Nation of Northwestern New Spain, 1533-1820 (Tucson: University of Arizona Press, 1981), 3. Axtell, "Some Thoughts," 37.
24. The quote is from anthropologist Florence C. Shippek "California Indian Reactions to the Franciscans," The Americas 41 (April 1985): 485, who offers a delightful reconstruction of how Kumeyaay Indians probably responded to Franciscans. Native responses can only be reconstructed through an informed imagination, but on the points in these paragraphs, anthropologists seem to agree.
25. For the Pueblos, see Dozier, Pueblo Indians, 50; Loucks, "Political and Economic Interactions Between Spaniards and Indians," 28-31.
26. Gutierrez, "When Padre Jesus Came," unpublished MS 18. See, too, Polzer, Rules and Precepts, 48.
27. Henry Dobyns, Fire and Flood, 54, suggests this in the case of the Pimas. See, too, Marvin T. Smith, Archaeology of Aboriginal Culture Change in the

Interior Southeast: Depopulation During the Early Historic Period (Gainesville: University of Florida Press, 1987), 126. Daniel T. Reff, "Demographic and Cultural Consequences of Old World Diseases in the Greater Southwest, 1520-1660" (Ph.D. diss., University of Oklahoma Press, 1985), 14, 264, 322-24, makes this a central argument in his work.

28. Gutierrez, "When Padre Jesus Came," unpublished MS, 34-38.

29. Gutierrez, "When Padre Jesus Came," 20, unpublished MS. Similarly, Apalachees abstained from sexual activity to give them strength in warfare. Hann, Apalachee, 249.

30. For attempts to convert Apaches and other nomads in the 1600s, see, for example, Forbes, Apache, Navajo, and Spaniard, 116-20, 1218-29, 158, 159-60. See, for example, the episode recounted in John, Storms, 76.

31. Fray Silvestre V lez de Escalante's diary, quoted in Eleanor B. Adams, "Fray Silvestre and the Obstinate Hopi," NMHR 38 (April 1963): 136.

32. This is, of course, a universal tendency, and there is widespread agreement among scholars that a syncretic religion developed among most natives in Spanish America. See, for example, Barth, Franciscan Education, 339, Gibson, Aztecs, 100-101, 134. This was also true in English America. See Axtell, "Some Thoughts," 39. Kathleen A. Deagan, "Culture in Transition: Fusion and Assimilation among the Eastern Timucua," in Tacachale: Essays on the Indians of Florida and Southeastern Georgia during the Historical Period, Jerald Milanich and Samuel Proctor, eds. (Gainesville: University Presses of Florida, 1978), 112-14; Spicer, Cycles of Conquest, 506-08, 567-72. Albert H. Schroeder, "Shifting for Survival in the Spanish Southwest," in Weber, New Spain's Far Northern Frontier, 239.

33. Lewis H. Larson, Jr., "Historic Guale Indians of the Georgia Coast and the Impact of the Spanish Mission Effort," in Milanich and Proctor, ed., Tacachale, 135, and David Hurst Tomas, "Saints and Savages," unpublished MS, 68-69.

34. Gutierrez, "When Padre Jesus Came," unpublished MS, 52. For a modern reference to Jesus as a Kachina, see Erna Fergusson, Dancing Gods: Indian Ceremonials of New Mexico and Arizona (Albuquerque: University of New Mexico Press, 1931): 33. Among the Hopis, who resisted Christianity more staunchly than other Pueblos, Frederick J. Dockstader found no case of a Kachina "taken over from white culture." The Kachina and the White Man: The Influence of White Culture on the Hopi Kachina Cult (1st ed., 1954; rev. ed., Albuquerque: University of New Mexico Press, 1985), 11.

35. Hann, Appalachee, 239, 241, 243. John Super, Food, Conquest, 88. Need full citation here, JLE Deagan, "Culture in Transition ... the Eastern Timucua," in Milanich and Proctor, eds., Tacachale, 113-14; Dozier, Pueblo Indians, 65-67.

36. See, for example, Dozier, Pueblo Indians, 65, who probably understates the impact of material culture, but who notes that the most "the most tangible changes ... affected the economy." For Florida, see the wide-ranging essay by Sylvia-Lyn Hilton, "El Impacto Espa ol en La Florida, Siglos XVI y XVII," in

Antonio Acosta and Juan Marchena, eds., La Influencia de Espanya en el Caribe, la Florida, y la Luisiana, 1500-1800 (Madrid: Institutio de Cooperaci n Iberoamericana, 1983), 249-70. Hann, Apalachee, 237-63, devotes a chapter to "Indian and Spanish Interaction and Acculturation," much of which represented missionary and Indian interaction. For a contrary view on the impact of material culture, see Reff, "Old World Diseases in the Greater Southwest," 325.

37. For an especially congenit discussion of the indirect impact of the acceptance of European domestic animals and winter wheat on the Pimas, see Thomas E. Sheridan, "Kino's Unforeseen Legacy: The Material Consequences of Missionization among the Piman Indians of Arizona and Sonora," The Smoke Signal, nos. 49 & 50 (Spring and Fall 1988): 157-60. Joh, Storms, 67. Larson, "Guale Indians" in Milanich and Proctor, eds., Tacachale, 133. Reff, "Old World Diseases in the Greater Southwest," 316-21, dismisses the importance of European "innovations" including livestock, but I believe that he overstates his case. Archaeological evidence suggests that Spanish trade goods were not abundant, especially in comparison to those available through the French and English. See, for example, Larson, "Guale Indians" in Milanich and Proctor, eds., Tacahale, 135-38, and Jack Williams work at presidio of Tucson, which you should cite when Jack publishes something from this, but the few trade goods that Spaniards did offer, together with those animals and plants that reproduced themselves, seem to me to be of great significance.

38. Examples are numerous. For Florida, see Covington, ed., Escobedo, 130-31, and for New Mexico, see the well-known episode at the Hop Pueblo Awatovi in 1700 (Cordell, Prehistory of the SW, 354-55).

39. For changes in burial customs, see, for example Deagan, "Culture in Transition ... the Eastern Timucua," and Larson, "Guale Indians," in Milanich and Proctor, eds., Tacachale, 114 and 134 respectively.

40. Pueblo practice has been termed a "dual tradition," or, more technically, "compartmentalization." Edward P. Dozier, "Rio Grande Pueblos," in Edward H. Spicer, Perspectives in American Indian Culture Change (Chicago: University of Chicago Press, 1961), 94. I am drawing the distinction between this, and a syncretic religion. Scholes, Troublous Times, 16, argues that in societies like those of the Pueblos, where "religion, village government, and social institutions were so closely interrelated . . . it was impossible to abolish any part without destroying the whole." For an extraordinary example of a Pueblo who publicly professed Catholicism, but who privately continued traditional practices, see John L. Kessell, "Esteban Clemente: Precursor of the Pueblo Revolt," El Palacio 86 (Winter 1980-81), 16-17. Robert Allen Matter, "Mission Life in Seventeenth-Century Florida," Catholic Historical Review 67 (July 1981): 418-20, provides a brief and balanced assessment of this question for Florida. For elements of syncretism in Spain, see Christian, Jr., Local Religion in Sixteenth-Century Spain and William A. Christian, Jr., Person and God in A Spanish Village (New York: Seminar Press, 1972).

41. The rate and percentage of decline of the Pueblo population over the course of the seventeenth century cannot be stated with accuracy because estimates of the base population as of 1600 vary wildly. See Albert H. Schroeder, "Pueblos Abandoned in Historic Times," in Handbook of American

Indians: Southwest, ed. by Alfonso Ortiz, vol. 9, (Washington: Smithsonian Institution), 254. The decline of numbers of Pueblos and their towns may have occurred quite early in the century, see Jack D. Forbes, Apache, Navaho, and Spaniard (Norman: University of Oklahoma Press, 1960), 139, 175, and Fray Juan de Pardo to the Viceroy, Mexico, September 26, 1638, who estimated the Pueblos had declined from 60,000 to 40,000 due to smallpox "and the sickness that the Mexicans called cocolitizli." Hackett, ed., Historical Documents, 3:108.

42. Bushnell, "That Demonic Game", 4, provides a good, brief discussion of the complicated question of the population of the Florida provinces as of 1675 and guidance to sources. Her figures do not include Apalachicola. On the Timucua, see Deagan, "Cultures in Transition ... the Eastern Timucua," in Milanich and Proctor, Tachachale, 89-90, 95. See, too, Jerald T. Milanich, "The Western Timucua: Patterns of Acculturation and Change," in *ibid.*, 59-88.

43. Hann, Apalachee, 163-166.

44. Authorities agree on this point. See, for example, Dozier, Pueblo Indians, 63; Hann, Apalachee, 175-78, 180.

45. Part of a folk tale from Santo Domingo, that apparently originated at Zuni, told in Fray Angelico Chavez, "Pohe-Yemo's Representative," NMHR 41 (April 1967): 115, who identifies this figure as Pohe-Yemo. In Tewa, the correct name is P'ose yemu--"he who scatters mist before him." Alfonso Ortiz, "Popay's Leadership: A Pueblo Perspective," El Palacio 86 (Winter 1980-81):21.

46. There is substantial evidence of this among the Pueblos. See, for example, Scholes, Troublous Times, 16, and Dozier, Pueblo Indians, 50.

47. Covington, ed., Escobedo, 133. See, too, Hann, Apalachee, 12-13, 184. Or, Martyrs of Florida, 101, and Matter, "Spanish Missions of Florida," 74, for other examples from Apalachee, Apalachicola, Timucua, and Guale respectively. (need a Pueblo source)

48. Cheryl J. Foote and Sandra K. Schackel, "Indian Women of New Mexico, 1535-1680," in New Mexico Women: Intercultural Perspectives, Joan M. Jensen and Darlis A. Miller, eds. (Albuquerque: University of New Mexico Press, 1986), 26-29. Gutierrez, "When Padre Jesus," MS, 22.

49. Evidence of such conduct among priests exists for New Mexico, according to the foremost authority, Scholes, Troublous Times, 188.

50. For an example of a village fleeing, see the case of a Guale village cited in Gannon, "Conflictos," 232. Benavides, 1634, 97, tells of the apparent poisoning attempt at Taos, and of the death of a priest at the Hopi Pueblo of Awatabi by what he believed to be poison (p. 77). Both Florida and New Mexico had a substantial number of martyrs, some of whom died rather mysteriously.

51. Ore, Martyrs of Florida, 73.

52. These rebellions are discussed in another work.

53. Archibald, "Indian Labor at the California Missions," 180. Fray Francisco Casanyas made the mistake explaining to Caddos that a smallpox epidemic of 1690-91 was God's will. See John, Storms, 189-90, with unfortunate consequences for his mission.

54. For this argument, see, among others, Bolton, "Mission as a Frontier Institution," 211; Gomez Canedo, Evangelizacion, 143; and Harry Kelsey, "European Impact on the California Indian," The Americas 41 (April 1985): 511, who comes to this conclusion after describing the story of the missions as "a tale of disaster." See, too, above, the note with DuHart and Frank Hamilton Cushing.

55. Declaration of Luis de Quintana, December 22, 1681, quoted in Frobes, Apache, Navaho, and Spaniard, 177. Dozier, Pueblo Indians, 50.

56. By resorting to force, the Christian preachers, as one Pueblo scholar has put it, "produced ... a people hostile to Spanish Catholicism and civilization." Dozier, Pueblo Indians, 55. Mary R. Jackman, Paternalism and Conflict in Intergroup Relations (Berkeley: University of California Press, 1989? Published manuscripts), argues that paternalism is most effective as a means of social control when it minimizes conflict. Need to watch for the publication of this manuscript--press still not certain--5/87.

57. The quote is from Spellman, "The 'Golden Age' of the Florida Missions," 355. There is no shortage of critical views by scholars, who have judged the missions as failures. See, for example, Bowden, American Indians and Christian Missions, xvi; Dozier, Pueblo Indians, 55; Robert Heizer, "Impact of Colonization on the Native California Societies," Journal of San Diego History 24 (Winter 1978): 121-39; Matter, "Mission Life in Seventeenth-Century Florida," 402, 418-20.

58. The first quote is from Matson and Fontana, eds. and trans., Friar Bringas Reports to the King, 31; the second is from Alfonso Ortiz, "San Juan," in Handbook of American Indians: Southwest, ed. by Alfonso Ortiz, vol. 9 (Washington: Smithsonian Institution), 281, writing about seventeenth-century New Mexico.

59. Fontana, "Indians and Missionaries," 58.

60. Polzer, Rules and Precepts, 53-54, suggests missionaries did not fail in this task, but rather that the racially stratified non-Indian world beyond the mission was "probably incapable of preparing and accepting Indians into the more advanced forms of frontier society" (55). His position, however, seems to beg the question. For the other viewpoint, see Ricard, Spiritual Conquest, 153-54, 288-95.

61. Matter, "Missions in the Defense of Spanish Florida," 36, 32, n. 48, 37, n. 67, who disagrees explicitly with Herbert Bolton on this point. See, too, Arnade, "Failure of Spanish Florida," 277.

62. Gibson, Aztecs, 111-12.

THE MIDDLEGROUND AND PUEBLO COMPARTMENTALIZATION:  
OR WHY IT'S EASIER TO BE A COMMENTATOR THAN TO PRESENT A PAPER

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Richard White's discussion of the "middle ground" of interaction between the French and the Great Lakes tribes skillfully encapsulates the process of acculturation familiar to the limited number of historians and ethnohistorians who have concentrated their efforts on these peoples during the seventeenth and eighteenth centuries. As he has demonstrated in much of his earlier work, White has the ability to incorporate a broad spectrum of ethnohistorical investigation into a meaningful synthesis, and his discussion of the "give and take" of French-Indian relations generally provides an excellent format for understanding this interaction.

I think that his focus upon Onontio as a father figure is especially valuable. Reflecting their own hierarchical power structure, the French were willing to envision themselves as the "Great Father" of the Algonquians (and Siouian and Iroquoian speaking people, for that matter) but they saw themselves in the stereotypical image of a European father who "rules as well as reigns." In contrast, the Native American father image reflected the needs of smaller societies governed not by abstract laws, but by personal relationships. Unlike the peoples of western Europe who could trace a reliance on codified law as far back as Hammurabi, the tribespeople of the Great Lakes resided in a more flexible society where conflicts were ameliorated through personal agreements, amenable to both sides. Fathers therefore, did not "lay down the law" to their children, but served as benefactors or kindly arbitrators, sympathetic to their children's shortcomings. As the primary materials from this period so amply illustrate, French officials were perennially frustrated over the tribespeople's continual thwarting of Onontio's precepts, followed by pleas for forgiveness and assurances of future improvement. Yet from the Indians perspective, a wide range of extenuating circumstances constantly invalidated abstract principles in favor of what might be termed "Native American situation ethics." Murder is not murder if the individual killed was perceived as an evil man. Thievery is not inherently wrong, especially if one man's surplus food or powder is needed to feed another man's family.

Although Richard doesn't specifically mention demography, it is obvious that one of the primary factors contributing to a "middle ground" of acculturation was the relatively small French or creole population in the Great Lakes region. Surrounded by more numerous tribespeople, French inhabitants of the pays d'en haut were forced to acculturate toward the "middle ground" if they wished to interact with their more powerful neighbors. In contrast, the growing population of the British enclaves concentrated on the east coast afforded the British the luxury of never progressing beyond what White calls the initial stage of interaction: the British continued to "simply assimilate Indians into their own conceptual order." Indians remained "savages" and Indian religion remained witchcraft or devil worship. In fact, those British officials (usually of Irish or Scots descent) who transcended this perspective are so remarkable (and relatively successful, that they stand out like sore thumbs from the usual humdrum of British Indian agents. Richard's discussion of the dual role held by influential Great Lakes Indian leaders also addresses a facet of

Indian-white relations in the region that needs more investigation. Serving as economic, political, and military power brokers, these "chiefs" were adroit politicians who habitually balanced the needs of their people against Onontio's demands. Unfortunately, primary information regarding late seventeenth and early eighteenth century figures such as Onanguisse of the Potawatomis, or Jean le Blanc of the Ottawas is relatively rare, but by the latter decades of the eighteenth century it is obvious that many of these individuals were of metis, or mixed Indian-French ancestry. By the second decade of the nineteenth century, many were of mixed Indian and British or Irish descent. Especially notable is the Langlade family among the Ottawas in northern Michigan, and individuals such as Asissenauk, a leader among the Ottawas and Potawatomis at Milwaukee, or the Richardville and Godfroy families among the Miamis. Billy Caldwell and Alexander Robinson who led the mixed Indian community at Chicago are other examples.

In retrospect, I think that Richard's use of the family analogy works much more successfully in describing the Indians' relationship with Onontio, than in his guarded assertion that "all Algonquians within the alliance were thus brothers and sisters". Indeed, one can find ample evidence of some intertribal harmony, and intertribal villages (at Detroit, Green Bay, Milwaukee, and Michillimackinac) periodically emerged during the period of French hegemony. But I would argue that much of this intertribal "harmony" preceded the French and owes its antecedents as much to pre-contact relationships as to the efforts of Onontio. For instance, the Ottawas, Potawatomis, and Miamis (or the Three Fires) all agree that they once were one people, and linguistic ties between the Miamis and the Illinois Confederacy are so similar, that glottochronologists argue that their separation came in very recent times. Similar linguistic ties existed between the Foxes, Sacs, and Kickapoos, and although the Winnebagos and Menominees spoke unrelated languages, they had shared the Green Bay-Fox-Wisconsin waterway long before the French penetrated into the region.

Just as important however is the record of continued intertribal conflict which permeated the region throughout this period. If the Algonquian tribes and their neighbors were "brothers and sisters" in Onontio's family, then his family was subject to considerable sibling rivalry. Richard points out that the Foxes were "disobedient children" whom Onontio was forced to punish, and indeed, among the tribes of the region they do stand out as the primary source of disruption, but many of the other tribes were periodically involved in intertribal warfare, and French officials were hard pressed to maintain any continued sense of peace or order. The catalog of intertribal quarreling is too long to include here, but to cite a few examples, during the last half of the seventeenth century Wisconsin was awash with bloodshed. Of course the poor Foxes seemed to be continually embroiled with the Sioux and the Chippewas, but in the 1670's and 80's the Ottawas quarreled with the Kickapoos and Mascoutens; during the same period these latter two tribes joined with the Miamis in a series of skirmishes against the Sioux; and almost all the northern tribes continued to clobber the hapless Illinois confederacy. As Richard mentions, in 1706-1708 the Ottawas and Miamis quarreled near Detroit, and during this period the Potawatomis also became embroiled with the Miamis; in 1712 the Ottawas, and Potawatomis first attacked the Mascoutens, then fell upon the Foxes, who retaliated in kind throughout the following two decades; by the late 1720's the Miamis were quarreling with the remnants of the Illinois; and during the next two decades the Potawatomis and Ottawas at Detroit first fought with the Huron-Petuns, then fell upon the Piankashaws. Meanwhile

everyone continued to pound the Rodney Dangerfield of the Algonquian linguistic group, the Illinois Confederacy. Obviously, all of these tribes periodically assembled at Mackinac, Detroit, or Montreal for French sponsored feasts of friendship, but I would argue that following the ceremonies the sibling rivalry often overshadowed the brotherly love.

I think that Richard is absolutely correct when he states that "the politics of the village ... intersected with the politics of empire," and that events taking place in what must have seemed to be relatively remote Indian villages in Ohio had a profound impact upon the struggle between the British and French for control of the North American continent. All of us who teach surveys of Native American history or who wade through beginning surveys of the history of the United States welcome such a perceptive analysis of the Native American role in what has sometimes been labeled as the "mainstream" of American history.

But I think that he also is overstating the inclination of these Native American people to form intertribal "republics" whose members subscribed to interests which transcended the perceived needs of their former tribes. Undoubtedly, multitribal villages did occur, and in the post-revolutionary period the tribes of the Old Northwest made several abortive attempts to form political and military confederations. Yet these attempts were marked more by failure than by success. Indian attempts to retain Ohio during the 1700's were momentarily successful, as both Generals Harmar and St. Clair could attest, but intertribal bickering over boundary lines, negotiations with the Americans, and just outright jealousy precluded any long-term success. And in the period prior to the War of 1812, I would argue that the Indian movement coalesced around the religious teachings of the Shawnee Prophet, not the political doctrines of Tecumseh. Of course, Tecumseh eclipsed his brother after the Treaty of Fort Wayne, but the Shawnee war chief's attempts to unite the tribes into a meaningful political confederacy was singularly unsuccessful. Far more village chiefs opposed the Shawnee than gave him their support. In fact, I would argue that Tecumseh's efforts at unification failed primarily because he championed concepts that ran counter to the accepted Native American norm: concepts centered upon locally based, village-centered, political units.

I'm afraid I have fewer comments upon David Weber's paper, not because it is lacking in merit, but because he very graciously agreed to fill in for Alphonso Ortiz at the last minute, and therefore was unable to get the paper to me until Monday. Moreover, and more importantly, I am much more comfortable wandering amidst the historical forests and prairies of the Midwest than the sun drenched deserts and mesas of the Spanish borderlands. It does seem to me however, that borderland historians, like some not to be named champions of the Puritans in New England, have tended to emphasize the efforts of their "dedicated and devout religious heroes" while excusing the impact of the more negative aspects of the Spanish mission system upon the Indians. I would not question that some of the more agricultural tribes, or perhaps some of the hunting and primarily gathering bands of south Texas readily acquiesced in the mission system, but I think that David's analysis of the interaction of priests and Indians presents a long awaited proper balance.

I was very interested however by his assertion that the Pueblo peoples, far from forming a syncretic religious faith incorporating various aspects of traditional Indian beliefs and Catholicism, have instead, "compartmentalized" each of these religious traditions. Several historians whose inquiry focuses upon both the Protestant and Catholic missionary efforts in the Northeast have assured us that the conversions which took place in that region were "genuine"

by both European and Native American standards, and that once past the Christian veil, the Indian converts were Catholic (or Protestant) in both form and substance. Such may indeed be the case, but if it is true it would differ markedly from my impressions of the mission endeavors among the Potawatomis and Shawnees in the Midwest or more recent missionary efforts on the Great Plains, and in Oklahoma. In contrast, these efforts seemed to have produced a religious experience that while less genuinely European (a conversion in which the Native American converts actually did relinquish all their previous religious beliefs) than that alleged accepted by the northeastern tribes, is more syncretic than the compartmentalization of the borderlands. And I really do question if the compartmentalization is as well defined as David Weber alleges. For instance, and this may be atypical and a poor example, but the altar in the mission church at the modern Zuni pueblo contains religious symbols from both the traditional Zuni faith and from Roman Catholicism, while several Kachinas, in addition to various stages of the cross, both adorn the walls of the chapel.

In conclusion however, let me congratulate both of the speakers for their well organized and thought provoking presentations. Both have been forced to condense rather broad conceptual analyses into a rather limited thirty minute format. Such condensation often precludes the qualification which can the delineate broad assertions in a book length manuscript. And, finally, let me assure Professor Weber, that those of us at Texas Christian University are pleased to see such scholarship emanating from one of our satellite campuses.

## COMMENTS ON WHITE AND WEBER

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I read these papers with enjoyment as well as profit. Both authors are knowledgeable in their fields, and have given their subjects considerable thought. Each paper will be considered separately:

### RICHARD WHITE: "THE 'MIDDLE GROUND' FOR INDIANS IN THE GREAT LAKES

This is a perceptive analysis of the evolution of French Amerindian policy in the pays d'en haut in the seventeenth and eighteenth centuries. Dr. White writes that he has undertaken this task because "in the pays d'en haut there emerged a common world of meaning capable of altering our whole view of Indian/ white relations. He writes that a study of this common world reveals that historians in the past have seriously underrated the Amerindian contribution to this development.

It is indeed true, as the author states, that colonial historians have distorted history by ignoring or underestimating the Amerindian factor. But there are ways and ways of distorting history, and one of them is to focus narrowly on one aspect of a situation without consideration of its context. In this case, the "new set of common conventions" detected by Dr. White as emerging during the eighteenth century had been an accepted fact of French/Amerindian diplomacy since long before the French even knew about the pays d'en haut.

By the period that Dr. White writes about, the "common world" between French and Amerindians had been explored for more than a century in Brazil, within the framework of the brazilwood trade that brought such prosperity to France during the sixteenth century. The Amerindians involved were Tupi-Guarani, principally the Tupinamba. This alliance had been developed specifically because of the commercial benefits involved: France's burgeoning textile industry was crying for red dye, not available in sufficient quantities in Europe, and the brazilwood stands along the Brazilian coast were by far the closest source of supply. (Before the discovery of the New World, red dye had to be imported from India, a long and difficult journey in pre-Suez canal days).

The Portuguese claim to Brazil, based upon the Alexandrine bull of 1493 and reinforced by the Treaty of Tordesillas of 1494, meant that France did not have legal (at least in European eyes) access to those fabulous forests. The French could have challenged the Portuguese directly, which would have meant war. But that would have been expensive, and besides, the French at that point did not want such an involvement. So other means were sought and found in three internationally recognized legal doctrines, one concerning freedom of the seas, another stating that what touches all must be approved by all (quod omnes tangit ab omnibus approbetur), and the third that land belongs to those who have occupied it since time immemorial. The first allowed France access to the Brazilian coast; the second came into effect when the French formed alliances with the Amerindians in whose territories the dyewood stands were found; and the third was invoked when the Portuguese sought to drive the French out. The

French reinforced the point of the last two doctrines by bringing Brazilians to Europe and having them take part in royal civic entries, as well as appearing at the French court; in both cases, the Brazilians made their obeisances to the king, asked for his aid against their enemies, and requested that missionaries be sent to them. In other words, the French were being invited into Brazil by the natives, who were the owners of the soil. The French emphasized their right to evangelize by baptizing visiting Amerindians in flamboyant court ceremonies. When the Portuguese objected to the intrusion into their claimed territories, the French could - and did - say they were there by the consent of the original inhabitants. When the annoyed Portuguese attacked the French in Brazil whenever they could, the French claimed they had no right to do that, as Brazil was Amerindian territory, and the French were there as guests and allies. Although the Portuguese - and Europeans generally - remained unconvinced, the Tupinamba and related groups were delighted with the arrangement, and willingly fought to maintain the French in their lands. It took the Portuguese all of the sixteenth century and well into the seventeenth before they could root the French out. By that time the brazilwood stands were diminishing at an ever-increasing rate as the Portuguese established sugar plantations and used their African slave labor to also cut dyewood.

The techniques the French employed to develop and maintain their Brazilian alliances provided the prototype for North America. For instance, they sent Frenchmen, often young boys, to live with the Brazilians to learn their languages and customs so that they could act as go-betweens. In the sixteenth century, these men were called "truchements" (interpreters); later. In North America, they would be called "coureurs-de-bois" (runners of the woods). They were effective in the French cause, but at an unexpected price to the French: when they intermarried with their host groups, instead of influencing them to become Frenchmen, as the latter confidently expected, the interpreters often became more like Brazilians, up to, and including, the practice of cannibalism. Because of the Portuguese claims, this was not a situation the French could do much about in Brazil (their attempts to establish colonies failed); but in North America, the political situation was very different.

First of all, at least as far as Canada was concerned, the claims of Portugal and Spain were not nearly so clear-cut; for one thing, it was uncertain at first on which side of the Tordesillas dividing line that Canada lay. Faced with this ambiguity, France invoked different legal principles in order to gain a foothold: despite the evident fact of a healthy and active native population, she resorted to the legal fictions of terra nullius ("land not under any sovereignty") and vacuum domicilium (no habitation). On this basis she could claim rights of "discovery" (Verrazzano's and Cartier's voyages being official examples). The non-Christian people who lived in those regions were not classed as inhabitants, as they were not organized into states (no more than the Brazilians had been, but in the south different political considerations had elicited different arguments). Instead of invoking the doctrine of consent or the right of possession from time immemorial, the French assumed they had a superior right over that of the natives; witness the behavior of Cartier. When Roberval was issued a commission to establish a colony, he was authorized to overcome possible native resistance by force, if necessary. The attempted settlement was a failure: the colonists found that when the Amerindians refused to trade with them, they soon faced a food crisis; on top of that, they had difficulty in coping with the climate. Thus, it became evident to the French that if they were to succeed in establishing a colonial presence in those northern regions,

even though Spain and Portugal were only minimally interested, it would have to be in cooperation with the Amerindians. An economic incentive for such a policy reinforced this, in the form of the fur trade. From there the French/Amerindian alliance grew, to reach its ultimate form in the colonial wars of the eighteenth century.

Seen from that perspective, the situation in the pays d'en haut is an aspect of the final phase of French/Amerindian policy in North America. Dr. White's analysis is not of an original development, but of a process that had been maturing over many years and in many places. This is not to deny that there were regional variations - witness, for instance, the French alliance with the English against the Amerindians of Guadeloupe - but simply to point out that what happened in the pays d'en haut was part of a much larger picture. Throughout this whole experience the French had never ceased to regard Amerindians as "sauvages," which at no time during the colonial period was anything other than pejorative; neither was it a neutral term, as some have since tried to claim.

Another characteristic of these alliances that should be kept in mind is that they were not always directed by the French, as Dr. White indicates. The Amerindians had their own agendas. And there were times when the French found it politic to go along with them. An example of this is the "mourning war", the traditional native way of exacting compensation for the loss of fellow tribesmen and relatives in some previous encounter. Dr. White acknowledges as much when he speaks of the politics of the villages determine the course of events. He hit the nail on the head when he observed that "the French longed for, and sporadically tried to create, an alternate form of alliance that was a simple extension of the French state rather than a union of French fathers and Algonquian children. They failed."

Dr. White is currently working on the role of "village politics" in the course of empire. That there was a point at which the two intersected is beyond doubt; what remains to be established is the significance and degree of influence exerted, as well as its timing and frequency. One could assume that as a general rule, "village politics" was most important during early contact, and that later, its chief importance would be in remote areas, such as the pays d'en haut during the latter part of the seventeenth and the first half of the eighteenth centuries. Sometimes a policy enunciated in one region could have unexpected effects in another: for example, the "one nation" of seventeenth century New France migrated across half a continent and through nearly two centuries to become the "new nation" of the nineteenth-century Red River settlement. That was the opposite of what France had set out to achieve.

The question of context again rises when Dr. White speaks about the British need for Amerindian allies finally overcoming imperial parsimony during the last years of the American War of Independence, when the "system of presents, alliance chiefs and mediation" was borrowed from the French and re-instituted in the pays d'en haut. Here again, the process had started much earlier: the British had adopted such a strategy in Acadia following the Peace of Utrecht of 1713, when they found the Micmac unwilling to concede that the defeat of the French meant that they, as allies of the French, had also been defeated. It took some convincing, and an intensification of Micmac hostilities in the 1720s, but eventually the British faced up to the inevitable and adopted gift diplomacy in their attempts to pacify the Micmac. They did not fully succeed, however, until the final defeat of the French at Montreal in 1760, and the Peace of Paris of

1763. This earlier experience paved the way for British Amerindian policy in the Old Northwest.

DAVID J. WEBER: "BLOOD OF MARTYRS; BLOOD OF INDIANS.

Dr. Weber's paper deals with another aspect of European/Amerindian relations: in this case, how the Christian message was received in Florida and New Mexico during the seventeenth century. The Franciscan invasion was particularly rapid in the southwest, where within three decades the friars, even though limited in numbers, established themselves in every pueblo. Traditionally, historians have represented the Franciscans as "hardy pioneers" who by their own unaided efforts brought the light of Christianity and civilization to rude, benighted, or even malevolent savages living under miserable primitive conditions. This was a view that was marred by the pervasive "Black Legend" of Spanish cruelty, from which the eminent Herbert Eugene Bolton sought to rehabilitate the Spaniards, even as he failed to question equally prevalent stereotypical views of Amerindians. Bolton saw the Franciscan missions as "a conspicuous feature of Spain's frontiering genius."

Even as it became acknowledged that the missions had a down side, historians generally followed in the path of Bolton to acclaim the Spanish missions a success. When, as it sometimes happened, the Amerindians revolted and killed some missionaries, the latter became martyrs in the holy cause that was on the whole beneficent. In reassessing this approach, Dr. Weber has rejected the villains and victims formula, and has set himself the task of trying "to understand the role that they [Amerindians] played in determining the scope, shape, and ultimate success or failure of the Franciscans' missionary program.

This task has been complicated by the lack of record from the Amerindian point of view. However, Dr. Weber has concluded that despite claimed successes, the missions as frontier institutions were essentially failures, because Amerindians did not want them to succeed. Even the measure of success they did enjoy could not have been achieved without native cooperation. What was more, the Amerindians would not have cooperated unless they thought they had something to gain, or that the price of resistance was too high. Under certain conditions, natives were able to manipulate missionaries to promote their own security, just as the Spanish crown used missionaries for its imperial purposes. The Amerindians' first impression was that the missionaries were both politically and spiritually powerful: important officials prostrated themselves before them, and diseases that struck down Amerindians spared the missionaries. That was an observation that would be modified in time as the new diseases demonstrated a lack of discrimination between converts and non-converts, and prosperity did not necessarily follow conversion.

Dr. Weber basically upholds his point that evangelization was a two-way process even as he in his turn fails to question certain stereotypes, particularly those relating to Amerindian hunting and agriculture. In this regard he leaves more to be brought out about the "Amerindian point of view."

To begin with agriculture. While it is true that Europeans introduced new foods into the Amerindian diet, as Dr. Weber says, the reverse is even more true. At the time of first contact, Amerindians were experts in plant husbandry; even hunters and gatherers who did not farm depended upon plants, a knowledge which could be necessary for survival. Missionaries and colonial

officials alike were struck by the extent and prevalence of botanical information; Amerindians made far wider use of their ecological resources than did Europeans. In terms of today's world food crops, at least two-thirds were contributed by Amerindians, and some authorities would put the proportion even higher; of the four major crops (wheat, rice, corn, and potatoes), two were developed by Amerindians. What is more, certain Amerindian crops that were "forgotten" or ignored in the hurly-burly of colonization are now being rediscovered: amaranth, for one. In this connection the myth cited by Dr. Weber is appropriate. It concerns a contest between the Christian God and the Zuni culture hero Poshaiyanyi as to who had the best things to eat. Although God had a fine table with many good comestibles, he ended up joining Poshaiyanyi and eating fat deer meat and tortillas on the ground. In other words, local foods and customs prevailed, as indeed, in actual fact, they did.

As the scope of the Amerindian ecological base becomes more clearly realized, questions also arise as to the numbers attained by prehistoric populations. On what basis does Dr. Weber say that post-contact villages supported denser populations than those of pre-contact days?

Dr. Weber's comment about the missionaries introducing animals "larger than any the natives had previously known" in reference to the Southwest raises a question. Weren't there buffalo on the southern plains? And as for European domestic animals freeing Amerindians from the necessity of hunting, the latter were skillful in controlling movements of game - fire was a principal instrument - so that "hunting" was not always either burdensome or chancy, particularly in the midst of the abundance that was characteristic of precolumbian America. Besides, pre-contact Amerindians were typically deeply attached to hunting; more than an occupation, it was a deeply significant part of a natural way of life.

The picture that Dr. Weber draws of the Franciscans relying on force to accomplish their missionary goals brings up an issue that was much debated during the early days of contact with the New World, particularly after the conquest of Mexico. There were two aspects to the problem: getting the unbaptized into an accepting frame of mind, and keeping the baptized within the fold. There was much less debate about using force in the latter case than in the former. In view of the scriptural injunction against baptizing the unwilling (Matthew 10:14), under what circumstances, if any, could force be justified? The original apostolic vision of the Franciscans for the New World, based upon the example of Christ and the Twelve Apostles who relied upon peaceful and rational persuasion, appears to have given way quickly to "hard line" arguments, of which a principal early exponent was the Franciscan Geronimo de Mendieta (1525-1604). By the time the Franciscans reached the pueblos of the Southwest in the seventeenth century, the argument was apparently over, and the "hard liners" were in control, especially where those who had accepted baptism were concerned. If one is to judge by the record as reported by Dr. Weber, the ultimate result was failure, despite initial successes. He illustrates this with the example of the Hopis, who at first submitted to the new teaching in 1629, revolted in 1680, and from that point refused to have a missionary among them. His analysis could benefit from an examination, even a brief one, of the process by which the original vision of converting all those millions of unbaptized Amerindians had proven to be an illusion. Perhaps the problem of keeping the baptized from relapsing had been the catalyst, providing the justification for the use of force, which was then applied at all stages.

If the apocalyptic vision was modified, what effect did that have on the Christian message itself? The emphasis in this paper is on the effects that Europeans had on the Amerindians; but what about the reverse? Weber skirts the issue rather than exploring it; an intriguing mention of Christ as Kachina is relegated to a footnote. Dr. Weber's concentration is on the selectivity of the Amerindians' acceptance of Christianity, which he says reached the point of "compartmentalization" - simultaneously practicing both Catholicism through the intermediary of a priest, and their traditional religion through a native priest. Dr. Weber is treading dangerously close to oversimplification of a difficult question; this is an area where Euro-Americans have considerable difficulty understanding Amerindian psychology.

If Amerindians accepted Christianity, why did that involve loss of autonomy? This was a question that had been asked in Mexico - if Amerindians converted, should they be allowed at least a measure of independence? There were theologians in Europe who argued that converts should have the same rights as any other Christians. On the scene in the Americas, however, colonial politics precluded the point ever being at issue.

Was the fear of eliminating "the reason for a mission's existence" really the explanation for the friars' slowness in hispanizing the Amerindians, as Weber suggests? On the contrary, an examination of Spanish colonial policy reveals that especially in the early days of contact and conquest, Spaniards, officially at least, were little concerned with cultural differences as long as they did not conflict with the practice of Christianity or with Spanish administration. Initial emphasis was on producing candidates for a native priesthood, as well as Christian leaders for self-governing communities, with only as much hispanicization as was thought necessary for the smooth functioning of the multi-national Spanish empire. Those goals were vitiated as the genuineness of the converts' Christianity came in for more and more serious criticism, and above all when the ordination of Amerindians was banned by the Church. The issue was the quality of Christianity, not the level of hispanicization, which at its most important remained secondary. This was a political situation that was probably reflected in the missions.

Both of these papers make genuine strides toward understanding the Amerindian side of the colonial experience. That they have not fully achieved their goals is more of an indication of the distance to be travelled, and the complexity of the terrain to be covered, than it is of the effectiveness of the efforts they have made. They have both set up sign posts that will be valuable to future explorers.

## TRIBAL REORGANIZATION IN THE SOUTHEAST, 1800-1840.

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The mountains and hills, that you see, are your backbones,  
and the gullies and creeks, which are between the hills and  
the mountains, are your heart veins.<sup>1</sup>

The speaker, a pre-Civil-war leader of the Western Creek Nation, thus expresses his notable attachment to a land to which many of his generation of Creeks had been dragged in chains. Their brief but violent rebellion, The Creek "war" of 1836, had enabled the United States to make Creek removal - to which the Nation never agreed - a military operation.<sup>2</sup>

In a larger sense, however, the migrant Creeks' identification with their new homeland reflects no irony, but a talent typical of southeastern tribespeople for appropriating new environments. Segmentation, and migration of parts of towns or tribes constitutes, historically, their preferred mode of political adaptation.

Southeastern migration legends gave mythic expression to a practice almost inherent in the political ethos and structure of their traditional communities. They were individualists; it was bad form for political leaders to guide them by any method other than example or persuasion. Consensual decision-making, powered by open and prolonged discourse, characterized their councils. Individuals, clan sections, or larger factions who could not abide the consensus had only the Hobbesian alternative of withdrawal from the social compact. Towns or parts of towns might also migrate to avoid crowding, to seek better hunting territories, better farmland, or superior pasture. Some traveled to escape disease, war, enslavement, or uncongenial neighbors. The eighteenth century Creek confederacy was a conglomerate of such migrants; but it was unusual only in its size, the extent of its heterogeneity, and the extent to which its component towns retained their cultural distinctiveness.<sup>3</sup>

The most notorious migrants of the eighteenth and early nineteenth centuries were Muscogulge frontiersmen who moved to northern Florida. Some preferred Spanish to English neighbors; others couldn't get along with their fellow townsmen. Prior to 1813, most were Hitchiti-speakers or represented other cultural minorities who may have resented Muskogee domination of the Confederacy. Many sought better hunting. They soon learned to exploit the wild cattle who remained after the destruction of Florida's Spanish missions.<sup>4</sup>

The migrants, who by 1770 began to be called "Seminolies," adapted not only to herding, at some expense to farming and hunting, but also to a new set of neighbors. Maroon communities of runaway blacks probably taught them how to grow rice and sugar cane and punch cattle on the prairie. By raiding, and trade, Seminoles acquired black slaves, as well. Their slaves served as interpreters and military advisers; but most of them also lived in black 'towns,' tribute-paying but otherwise independent, in the tradition of the ethnically diverse Creek confederacy of migrants and runaways.<sup>5</sup>

Known alternatively as Lower Creeks and 'Seminolies,' the Florida towns occasionally sent chiefs to Creek national councils and treaty conferences, and listened respectfully to "strong talks" from their brethren to the north. During

the British takeover of Florida (1763-1783) they also began making treaties on their own.<sup>6</sup> Their flourishing villages between the Apalachicola and the St. John's suffered destruction first as a result of their involvement in resisting an abortive annexation movement out of Georgia. Although they did not engage initially in the 1813-14 Creek War, their rebel brethren to the north fled to Florida in large numbers, some settling in or near existing settlements and others bypassing them for more remote spots further down the Peninsula.<sup>7</sup>

The Seminoles, particularly Seminole blacks, responded enthusiastically to British offers of aid. Their British alliance, their raids on white settlements, and their attack on a ship reinforcing a new American fort near their villages supplied the pretext for the First Seminole war (1818-19). That war offered 'friendly' Creek warriors who fought for the U.S., as well as white militia, the first of several opportunities for slave-raiding and cattle-rustling in Florida. The war drove the Florida villagers further south, and a treaty of 1823 with a newly invented Seminole tribal council confined them briefly to an inhospitable reservation in central Florida. Further slave-raiding and the threat of removal west sparked the Second Seminole War (1835-42), a seven-year guerrilla operation in defense of red and black autonomy during which the United States forced the majority to surrender and go west. After ambiguous promises that they might be treated like other Seminoles, their blacks surrendered and went along. Though the Western Seminoles preferred to stay with the Cherokees, both Cherokee slaveholders and United States officials forced them to locate with the Creeks, from whom they gained political independence in 1855. Rather than live under a Creek council dominated by slaveholders and raiders, hundreds of Seminoles and blacks meanwhile fled to Texas.<sup>8</sup>

The few hundred diehards who evaded capture in Florida hid in the Everglades, lived in matrilineal family camps, hunted new fauna, gathered new flora, and warred again in the late fifties when intruding army surveyors destroyed a chief's banana trees. They maintained their languages, some of their clans, and their special version of the Green Corn dance. But only by transforming their subsistence system and radically simplifying their social and political organization and ceremonial practice could these so-called "traditionalists" maintain the isolation they had learned, the hard way, to equate with survival.<sup>9</sup>

The story of the Seminoles and their so-called slaves helps explain why some southeastern Indians, clearly enthusiasts for their own brand of frontier expansion, preferred not to undertake a removal to Andrew Jackson's favorite safety-valve beyond the Mississippi. Other tribes clung to the core of their eastern homelands because, as they both professed and proved, these territories held the graves of many generations of ancestors and were home to the spirit people as well.<sup>10</sup> Furthermore, Jackson and his friends asked them to leave sacred territory not for their own convenience, but for the good of others. As a thought experiment, we may imagine the enthusiasm the mythically peripatetic citizens of Los Angeles might display when informed that it was now time for them all to move out to the smog-free beaches of the Biloxi region to make way for the more crowded and arguably more industrious people of Hong Kong.

The United States itself undertook measures that undermined the removal policy. The Jacksonians created a special set of differences between the Creeks and the Seminoles. Yet the government generally not only overlooked the fact that early immigrants to the Creek, Choctaw, and Cherokee Nations west had chosen to remove in part because they were glad to miss the people they left

behind, but also relentlessly pursued measures that embittered relations between migrants and those who chose to stay at home.

The first Cherokee pioneers of the trans-Mississippi west came from the Lower Towns on the Tennessee, founded by militants unwilling to take peace from whites who had punitively destroyed fifty Cherokee towns in 1775. From 1779 to 1794, peacenik Cherokees as well as hostiles suffered yet further destruction in retaliation for the Lower Towns' raids on Tennessee and Georgia frontiersmen. When they finally gave up, migrants from the Lower Towns traveled west. Some eventually founded the western Cherokee Nation in Arkansas; others preferred Texas.<sup>11</sup>

More sedentary Lower Towns chiefs settled down to selling Tennessee territory, collecting bribes, and other civilized pursuits. When Cherokee patriots executed Doublehead for his services to the United States, and frustrated Lower Towns efforts to promote a wholesale land exchange, more relatives of the recent migrants left for Arkansas. Western Cherokees abetted U.S. efforts to force a general removal in 1817-19, and again in 1828. They successfully claimed both a "share" of Eastern lands (in exchange for western boundaries) and one-third of the tribal annuity. Not surprisingly, Eastern Cherokees after their forced removal in 1838 battled western Cherokees for years. As usual, the United States exacerbated the conflict by antic interventions based on the premise that the difficulties they had created derived solely from the wayward ambitions of Chief John Ross.<sup>12</sup>

In 1825, U.S. commissioners bribed William McIntosh to sell not only his Cowetas' Georgia land, but everyone else's, and half the territory of the Alabama Creeks as well. After his indignant countrymen assassinated McIntosh, his faction became the pioneers of the Creek Nation West. Forcibly removed in 1836, the Upper Creeks settled river valleys well to the south of the McIntosh pioneers, and did their best to maintain an independent regional council.<sup>13</sup>

When in 1820 the United States offered the Choctaws a land exchange so they could guarantee a home to their bold hunters who had founded trans-Mississippi villages, Pushmataha replied angrily that the expatriates should come home to Mississippi. There was no special bitterness between the earlier and the later Choctaw migrants, or between the closely related Choctaw and Chickasaw. But the Chickasaw might have migrated ten years earlier had they been permitted to go to Texas, rather than required to purchase the land and accept the sovereignty of the Choctaw.<sup>14</sup>

Native Americans, like Americans whose ancestors came from England, Scotland, or Ireland, might have preferred staying at home as they were or enjoying a free choice of new frontiers to the painful process of deliberate and rapid adaptation of their subsistence, social, and political systems at home. But the population explosion, the liberation from British rule, the improvements in techniques of cotton production and long-distance transportation that opened frontier options for U.S. citizens, foreclosed them for Indians. The seventeenth and eighteenth century fur trade had profited both peoples. By 1800, Indians needed rum, cloth, and powder as much as they ever had. Unfortunately, their consumer debts helped the new American government to treaty them out of their hunting territories. Close to home, white settlers in increasing numbers competed with them for diminishing supplies of game. As the French, the British, and finally the Spanish abandoned their new world, the presents and the playoff systems that had enabled Indians to shape the marketplace along lines congenial to traditional notions of reciprocity disappeared. Meanwhile, U.S. officials provided tools, stock, and advice designed to enable them to live better

with less land and different laws. Indians faced the alternative of abandoning the core of their ancient homelands for uncongenial frontiers others chose for them, or trying on the newer American style called "civilization." So they tried it.

George Washington sent North Carolina Federalist Benjamin Hawkins in 1796 to act as "temporary" superintendent of tribes south of the Ohio. For twenty years, Hawkins assumed the role of 'beloved man' among the Creeks. As the Cherokee, Choctaw, and Chickasaw acquired agents of their own, Hawkins encouraged those men to follow his example. Among the Creeks, Hawkins established a model plantation, self-sufficient by virtue of its mills, smithies, and other handicraft shops. As their national 'beloved man', he called regional and national Creek councils, and lectured them on proper behavior.<sup>15</sup>

The first critical changes he sponsored entailed modification of the most coercive element of the Indians' traditional civil polity, the clan. The aspect of clan rule Hawkins targeted was not, directly, their control of marital relations and children's upbringing, but their law of retaliation. Clans punished murders of their members, and when they visited punishment on outsiders the result, often, was war. Unlike their British, French, and Spanish predecessors (or competitors) the United States tried to prevent, rather than encourage, intertribal conflict. As Indian and white frontiers approached one another, they also tried to prevent interracial war. The close neighborhood of whites also promoted an important secondary occupation for restless young men of both races - horse theft. Hawkins turned his attention to curbing that source of interracial conflict. He and others persuaded the southeastern tribes to establish draconian penalties for horse theft and to adapt an institution pioneered by Creek chief Alexander McGillivray in the 1780's, a light-horse police to enforce the new penalties. He persuaded the tribes to abolish clan revenge and let the light-horse execute murderers. New laws made policemen who killed in self-defense, and any who killed by accident, immune from clan retaliation. Hawkins and his fellow agents encouraged victims of interracial murder to resort to state or federal courts, rather than retaliation. Most Indian headmen, as anxious as Hawkins to avoid destruction, proved more willing than most white courts to enforce the new method of conflict resolution. When juries refused to penalize white murderers, Hawkins and his fellows fell back on an alternative Indian tradition and paid damages to Indian families.<sup>16</sup>

Hawkins and his fellow agents encouraged mixed-blood fathers in their councils in another attack on clan prerogatives - laws that enabled fathers to pass property by will to wives and children rather than to their own clan relatives. (Clans enforced exogamous marriages, so wives and children could not be clan relatives.) Apparently the councils who passed such laws were mostly regional or national. Hawkins' reformation intentionally enhanced the authority and regularity of national councils at the expense of town councils of clan headmen who had traditionally exercised most powers of civil and military government.<sup>17</sup>

The U.S. agents' innovations evoked different responses in various villages, regions, and tribes. Some families or villages left for Arkansas, Texas, or Florida to get away from them. Others embraced the changes and successfully bent novel institutions to their own purposes. The Cherokee went furthest in this direction in the period before removal.

Their Yankee agent, Return J. Meigs, did not fall into the role of tribal 'beloved man' with quite the same enthusiasm as Hawkins. For a long time he lived at a federal military post outside the nation. He seldom called councils,

and seldom attended those the Cherokees called. When he showed up, he generally asked for land. Meigs promoted both 'civilization' and justice for the Cherokee, but his frustrations in promoting both on the Tennessee and Georgia frontiers made him a stronger enthusiast for removal than his Presidential mentor, Thomas Jefferson. In 1808-9 he encouraged the Lower Towns faction to approach the President with emigration in mind.<sup>18</sup>

The upshot of his efforts was a reconciliation of factions and the establishment of new constitutional laws for the Cherokees: a "committee" with strong mixed-blood representation undertook to manage the often controversial tribal annuity expenditures, as well as day-to-day relations with the United States. A single tribal council, composed mainly of full-bloods, had to agree to land cessions and new laws. During the Cherokee's second removal crisis, 1817-19, another committee, of Cherokee women, led by Nancy Ward, 'beloved woman' and literally grandmother to several statemen, petitioned a national council to save the land for their children. To affirm their unity and strengthen their resistance, the 54 towns wrote the bicameral legislature and its prerogatives into formal constitutional law. Subsequently the Cherokees divided their nation into eight districts where individual adult males elected representatives to committee and council without respect, theoretically, to clan or town affiliation. They avoided conflicts such as the Creeks had experienced from making the lighthorse police judges, jury, and executioners, by setting up a court system, with jury trials. The Georgians' increasingly vocal insistence on Cherokee removal produced both a third removal crisis and an 1827 constitution modeled on that of the United States and those of the surrounding states.<sup>19</sup>

The Cherokees' national governmental framework not only enabled them for a quarter of a century to resist U.S. attempts to bribe regional or local leaders into land cessions; it also provided a national forum for reconciling the interests of a growing planter class, an aspiring Christian minority, and a larger class of sometimes traditional hillbilly farmers. Cherokee laws tried to protect national boundaries by regulating the admission of white farm laborers, mechanics, and teachers, and by naturalizing white spouses of Cherokee men and women. They awarded franchises for roads and ferries, and provided for debt collection. They also protected debtors with generous limitations on distraint of property essential for subsistence, and protected Cherokee women with white husbands from breach of contract and misuse of their property. They began to model laws regulating intermarriage with blacks and restricting slave ownership and management of property on the laws of white plantation communities. They half-heartedly discouraged polygamy and wholeheartedly joined Christians in attempting to regulate the sale of whiskey. Their constitution mandated support of the means of education; their council admitted missionary teachers and financed a bilingual national newspaper that printed their laws. Responding directly to the U.S. removal tactics, the National Council in the late 1820's put in writing an old law prescribing death for anyone who sold land without Council sanction, and attempted to prevent speculation in improvements for sale to the United States or to individual whites.<sup>20</sup>

Following their 'beloved' Benjamin Hawkins, the Creeks pioneered in using the light-horse police to punish murder and theft, in establishing a district system of election to a national council, and in revising their laws relating to murder. The tenor of their early recorded laws suggests that they used their national councils, as they had their clan and village councils, as courts, making law case by case. It took them several tries to define "accidental" homicide. They also pioneered in penalizing marriage to blacks, requiring parents to

disinherit children who so "disgraced" the tribe. The Seminoles, by contrast, made children of intermarried "slaves" free. The increasing difference between Creek and Seminole use and treatment of slaves was of course critical to their alienation from one another. In the long run, the adoption of the southern model of slavery constituted a determining element in the development of a class system that distanced and sometimes embittered relationships between full-bloods and mixed-bloods of most southeastern tribes.

The Creeks showed enthusiasm equal to the Cherokees' for permitting patrilineal inheritance, penalizing infanticide, and protecting stockraisers by denying their liability for the destruction of unfenced crops. Neither their constitutional law nor their property laws reached the level of elaboration the Cherokees achieved; and until the 1840's the Creeks East and West actively discouraged the "means of education" when that meant sponsoring Christian evangelists. Slaveowners suspected Christians of teaching dangerous thoughts to their slaves, and traditionalists saw them as a threat to their ceremonial life.

Written laws and tribal police could also be used to enforce old customs. Eastern Creeks in the early 1820's not only regulated the employment of artisans and ministers; they penalized people who interfered with rainmakers, and gave their traditional four-year mourning period for widows the sanction of written law. After removal, hostility to all whites led their councils to exclude missionaries from the nation for several years; and they fined Creeks who failed to turn up at the busk and take their physic.<sup>21</sup>

The Choctaws and Chickasaws showed earlier enthusiasm than the Cherokee for using national funds to support missionary education.<sup>22</sup> Neither tribe, before removal, elaborated its property and slave codes or its constitutional laws as the Cherokees did.

The Choctaws' first publicized laws reflected early missionary conquests in the Six Towns, supposedly the most conservative of their three regions. In 1822, Chief Red Fort and his council organized a corps of lighthorse who destroyed whiskey, and gave 39 lashes to thieves, abortionists, and adulterers. Missionaries and conservatives could usually get together on the evils of drink. Mixed-bloods shortly afterward sponsored the creation of light-horse units in other districts.<sup>23</sup>

Two of the Choctaws' three regional chiefs died in Washington in 1824 during the negotiation of their 1825 treaty. When the U.S. appointed commissioners in 1826 for another round of negotiations, young mixed-blood politicians feared the vulnerability of traditional leaders to bribery and persuasion, and held regional councils in which they deposed the quasi-hereditary chiefs in favor of themselves. Greenwood Leflore of the Northwestern District then called a constitutional convention which established elective chieftainships and provided for the election of eight men in each district to a Committee that would examine individual debts - probably to prevent their being charged to the nation and paid in land. The Committee also proposed legislation to a biennial National Council consisting of themselves, the clan leaders of the towns, and a member from each "captain's" company. Unlike the 1827 Cherokee constitution, the Choctaws' did not suggest that town representatives be elected. Their national councils of 1826-7 and 1828-9 dealt seriously with the whiskey problem, responded to missionary concerns about polygamy and the persecution of alleged "witches," and abolished some unique funerary customs.<sup>24</sup>

In 1828-29, Protestant religious revivals, in the wake of the "modernist" coup, provoked a backlash among traditionalists, two of whom offered to emigrate if the U.S. would return them to office. When Mississippi extended

her laws over her Indians in January, 1830, mixed-blood chiefs, faced with the abolition of their new government, and the prospect of ruinous trespass, began to negotiate for removal. Fullbloods and mixed-bloods competed in deposing one another and proposing treaties. They narrowly averted armed conflict. Greenwood Leflore (who prudently pursued his remaining political career as a wealthy citizen-planter of Mississippi) worked out a treaty in September, 1830, that theoretically reconciled fullblood and mixed-blood interests. There were generous payoffs for all. The fourteenth article provided homesteads for those who wanted to remain in Mississippi when the rest removed. However fraudulent its administration, this provision enabled thousands of Choctaws to continue living near their sacred Ninah Waiyah mound, where philanthropists rediscovered the Eastern Band of Choctaws toward the end of World War I.<sup>25</sup>

Like the Eastern Seminoles and Mikasukis, and the Eastern Cherokees who remained in or migrated to their old Middle Towns in North Carolina in 1838-39, the Mississippi Choctaws placed a premium on isolation, and retained their language and versions of their traditional political, ceremonial, and educational systems more vigorously than the migrant majorities. In the nineteenth century, each of these communities established unique patron-client relationships with helpful whites, and relied more upon them than upon a 'national' government to handle its relations with outsiders.<sup>26</sup>

The political adaptations of the so-called "civilized" tribes appear superficially to range on a continuum from the conservative Seminole and Creek to the progressive Cherokee. John R. Swanton, the classic student of their traditional society, attributed the Creeks' conservatism to the elaborate and elegant organization of their confederacy and its ceremonial life.<sup>27</sup> Many observers, beginning with agent Return J. Meigs, attributed Cherokee "progressivism" to the multitude of influential mixed-bloods who sponsored their legal and constitutional revisions.<sup>28</sup> All these explanations rest on some model of unilinear social and political development that is misleading in its neglect of the multitude of options, the variety of oppressions, and the personal and collective creativity of the Indian peoples.

Apart from their unique town moiety system, which functioned both to integrate the multitude of tribal fragments attached to the Creek confederacy and to encourage their cultural and political separatism, the Creeks' aboriginal political organization was remarkably like that of the Cherokees, as anthropologist Fred Gearing reconstructs it: a clan-based, 'white' or civil government alternating in function with a less formally-controlled, more achievement-oriented "red" government for war and external relations. Individuals filled an elaborate hierarchy of offices in both systems, and town councils ideally balanced advice from leaders experienced in both civil and military operations when they deliberated their options.<sup>29</sup> In both tribes, bitter intertribal wars and mounting white pressures in the eighteenth century led to competition between civil and military leaders for control of various experiments in regional and national integration. The Chickasaws and Choctaws' traditional governing organizations were similar in critical respects to those of the Creeks and Cherokees, and their eighteenth century developmental experiences as well. The Chickasaws, however, were a small tribe with few towns and excellent relationships with British traders. Their factional quarrels proved less debilitating than those of the other tribes, and by 1800, a community of white traders centered on the Colbert family had achieved such effective dominance over their traditional leaders that they required no formal constitutional and legal experiments until after removal.<sup>30</sup>

No one has systematically compared the racial compositions of the major southeastern tribes in the early nineteenth century, and rigorous statistical comparison may well prove impossible.<sup>31</sup> Intuitively, it seems unlikely that in 1800 the proportions of Indian and white ancestors and residents in each tribal group would have been significantly different. All four tribes from the late seventeenth or early eighteenth centuries had one or more resident white traders in each major town; most of these established marital alliances with women of prominent clans, and presumably most had children. Despite the mortality of traders themselves in intertribal and interracial wars, by 1800 their descendants in each of the tribes must have numbered in the hundreds, or more probably the thousands.<sup>32</sup>

Relatively few nineteenth century tribal leaders bore the names of seventeenth or early eighteenth century traders. There were no Eleazar Wigans in the Cherokee constitutional convention, though this earliest of their permanent traders lived among them for decades. Nor do John Ross's councils contain any Ludovic Grants. On the other hand, Grant, a contemporary of Wigan, through a single daughter and three maritally active granddaughters produced twenty-seven identifiable great-grandchildren. The fourth generation of his descendants included a Treasurer and Chief Justice of the Eastern Cherokee Nation, a noted Methodist minister, and a Lower Towns warrior who spent his later career trying to extract a land grant for the Texas Cherokees.<sup>33</sup> What happened to Grant's sons, and the sons of Eleazar Wigan, and the sons of early traders in all the tribes? If their fathers took an interest in them, they could have spent their adult lives in Charles Town, London, or Edinburgh. If, as is likely, their maternal uncles took a greater interest, many may have ended their lives like the mixed-blood Cherokee "stripling" whose fate James Adair so poignantly describes, who died at the stake at the hands of his tribal enemies. The trader's son who became a factor might retain his patronymic; but the "nephew" who became a warrior or a shaman probably did not. Like the Cherokees' Ridge, a prominent nineteenth century statesman, many either forgot or rejected their white ancestors, and identified as "fullbloods."<sup>34</sup>

The famous fathers of the Bushyheads (John Stuart), the Martins, Rosses, and Leflores were relatively late-comers among Cherokee and Choctaw officials and traders. Most of them married women of three-quarters or less - often much less - Indian ancestry.<sup>35</sup> The decline of intertribal warfare after the Revolution promoted greater economic security; missionary efforts and the near neighborhood of white settlements improved educational opportunities. The need for experienced management of increasing tribal annuities and for negotiators who could deal with whites on their own terms, and the often defensive enthusiasm of some hereditary chiefs for 'civilization' programs all offered mixed-bloods who identified with both Indian communities and white models new opportunities for wealth and political influence.

Nineteenth century mixed-bloods still enjoyed a variety of choices with respect to cultural identification and political strategy, and a variety of "parental" models. Differences in tribal political adaptations reflect not only variant traditions, but also the cultural choices of their leaders; the social and political relationships of traditionalists and modernists, of red, white, and black, to one another and to significant whites outside the tribe; and particular historical relationships to the United States and competing European powers.

The first Creek experiments with centralized government and tribal police occurred when a single leader, Alexander McGillivray, used them to reward his friends and punish his enemies - sometimes quite brutally. McGillivray left no

political heirs but Benjamin Hawkins, who all-too-literally adopted McGillivray's role as national 'beloved man,' and his propensity for brutal law enforcement. Those who followed Hawkins's advice could easily be identified as factional friends of the Great White Father who called councils and gave presents with his instructions. Hawkins had clients, like William McIntosh, of Coweta, an enthusiastic commander of the Light Horse, and the Big Warrior, of Tuckabatchee, whose daughter married a white sub-agent of the United States. Quite unlike Charles Hicks and the Pathkiller among the Cherokees, Hawkins's clients did not establish a coherent governing group independent of their agent. Both, instead, built personal fortunes and used their connections less often to reconcile conflicting groups within the tribe, than to punish their enemies. Perhaps the ethnic diversity and complex factionalism of the tribe discouraged independent efforts at unification; in any case, no one succeeded in making them. The habit of referring to towns of the opposite moiety as "enemies" reflects an ethos at odds with cooperative efforts on the political level.<sup>36</sup>

Instead, in 1813, the violent successes of the agent's friends in punishing murderers of intruding whites provoked a chain reaction of retaliations, and civil war. Tecumseh's 1811 appeal for an anti-white revivalistic movement found a thoughtful reception among the Shawnees' longtime friends at Tuckabatchee. The prophet he left with the Creeks recruited disciples among frustrated young warriors, and among some not so youthful mixed-bloods. The resulting millenarian movement may have revitalized the Creeks' sense of their unique and powerful relationship with their 'Master of Breath' and the spirits of their native land, but the magical Dance of the Lakes did not effect any perceptible change in their drinking habits, and if anything it exacerbated their intergroup hostilities, as well as their hostility toward whites. Unlike Handsome Lake of the Seneca, and the 'modernizers' among the Cherokee and Choctaw, who preached against witchcraft and accusations of witchcraft for the excellent reason that these made harmonizing cultural differences impossible, the Creek prophets used accusations of witchcraft, together with physical coercion, to make converts and punish competitors. The result was a civil war that pitted Creek against Creek with consequences that embittered relations between traditionalists and modernizers from that time forward. Tennesseans and Georgians had been waiting in the wings for this kind of opportunity. They took it, and half the Creek national territory. Then they took 'friendly' Creeks along with them in pursuit of the now 'Seminole' hostiles in a war that fractured forever the possibility of cooperation between the likes of William McIntosh and the Seminole brothers whose homeland he destroyed as profitably as he enslaved their black fellow townsmen.<sup>37</sup>

Where had all the Creek mixed-bloods gone? All too many had gone to warriors and victims of war. Their blood filled the ruins of Fort Mimms - and encarmined the Tallapoosa at Horseshoe Bend. Prophets like Josiah Francis and 'hostile' warriors like Peter McQueen and his nephew, Osceola, died in Florida. William Weatherford, the sometime "hostile," and his multitude of "friendly" family connections took advantage of reservations the 1814 treaty offered "friendly" warriors to further establish their settlements in the Tensaw neighborhoods of South Alabama, out of the Nation and off the firing line. Some of their descendants emerged in the 1960's as the Eastern Creek Nation. William McIntosh stayed in Georgia long enough to sell out the land at a large financial profit to himself and a large political profit to his cousin, Governor George M. Troup of Georgia. Then his enemies executed him for violating a national law the Cherokees had suggested to the Creeks after McIntosh had tried

to bribe Cherokee mixed-bloods on behalf of the United States. Most of McIntosh's friends then went west, but enough mixed-bloods stayed behind to join land companies from Columbus, Georgia, in an orgy of speculation in Creek allotments under their 1832 treaty. Those allotments were supposed to provide the Alabama Creeks with a home. Mixed-bloods like Paddy Carr helped speculators hire Creeks who had already sold their allotments to impersonate Creeks who hadn't, and sell theirs. A still more sophisticated speculator with a Creek grandmother founded Tuskegee, Alabama, in 1833, and really enjoyed watching the ball-play that went on while surveyors marked the town lots.

Another Creek with some white ancestry, Opothle Yahola, became Big Warrior's Speaker of the Upper Towns, led the final verbal battle against removal, helped the U.S. fight the last Creek rebels in Alabama, and survived to lead Union Creeks in the Civil War. A large slaveholder himself, Opothle Yahola did not retain his position of leadership in the Western Creek Nation by mentioning his ancestry, or by suggesting that the Upper Creeks buddy up with the McIntoshes, or abandon their traditional town government.<sup>38</sup> In their forced removal and its aftermath, the Creeks lost more than four times as many people as fell at Horseshoe Bend, the most murderous battle in the history of U.S.-Indian warfare. The experience did not endear white people, their descendants, or their institutions to the survivors. The people of Opothle Yahola's Tuckabatchee carried their council fire in their sacred ark along their Trail of Tears and buried it, with their sacred plates, at the center of their new town square. Then the survivors of this Mother Town of the Confederacy built a Town House.

The Cherokees opted for harmony. They had their 'ghost-dance' in 1811, but they had already put together their Upper Town/Lower Town factions when it occurred. They had suffered devastating destruction between 1775 and 1794; 'French' Indians like Tecumseh's Shawnee were traditional enemies of most Cherokee, and by 1811 the Shawnees' sometime Cherokee friends were west of the Mississippi. The Ridge, an older and wiser Lower Towns warrior, had little difficulty persuading Cherokees to fight with Andrew Jackson rather than against him. Their Creek War gave warrior credentials to mixed-blood officers like John Ross, who soon thereafter showed up on tribal delegations to Washington.<sup>39</sup>

John Ross was well on his way to becoming Principal Chief when White Path raised councils of rebellion against the Cherokees' 1827 constitution. Ross's government passed stern laws against subversive councils. It also held a council of reconciliation with White Path and he returned as a representative on their National Council. After the 1835 removal Treaty of New Echota, White Path got drunk and told a festival crowd at Ellijay they should not leave Georgia without cutting the throat of every white in the neighborhood. John Ross took White Path with him to Washington, where the old chief's responsibilities as a tribal delegate kept him - trying to negotiate a less fraudulent treaty - until Georgia's Cherokees were removed from the state.<sup>40</sup>

The Cherokees did a much better job than the Creeks of maintaining cooperation among people of different - and changing - cultural orientations. But they too succumbed to fratricidal factionalism after the United States fostered the party who signed their removal treaty without national sanction, and then insisted that Ross's Eastern Cherokees settle down fraternally with both the expatriate western Cherokees and the Treaty faction the majority of easterners held responsible for sending them down the Trail of Tears.<sup>41</sup> They nonetheless managed to live together, and after their reconciliation in a treaty

of 1846, to enjoy a brief "golden age" before the Civil War ruptured the compact once again.

The Chickasaws and Choctaws also managed to reconcile their factions. The Chickasaws, a small tribe, were notoriously "ruled" by James Colbert, a Scot who moved in with them as a young man in the 1730's. He was an honest trader and a good warrior, and some said his Chickasaw was better than his English. He brought his several sons up so closely identified with the tribe they never learned to read and write. As adults, they saw the value of literacy and numeracy in the post-Revolutionary world, and as early as 1806 a Colbert grandson was studying square root to prepare for further studies in bookkeeping and surveying. The Old King and his councils used the Colberts to do their negotiating with the United States. They got substantial presents for themselves, big annuities for tribal schools, and the best removal treaty any tribe enjoyed. They even set themselves and other mixed-bloods up, with the King, on a Committee to supervise the sale of Chickasaw allotments, a business profitable to them and profitable enough for the rest of the Chickasaws that they arrived in Indian Territory with per capita payments so large some people feared they would never get down to work. After Levi Colbert died, they set up a district government to handle their funds and schools, but they couldn't make a national constitution until 1857, after a treaty liberated them from Choctaw rule. They celebrated with a long, very civilized instrument that pronounced polygamy unconstitutional.<sup>42</sup>

After removal, the Choctaws named their three districts after dead traditional chiefs, but one of their educated mixed-bloods provided their council with a congenial constitution, modeled on Mississippi's but adapted to the tribe's unique regional organization. Peter Pitchlynn revised his 1834 constitution - the first such formal instrument in the area now known as Oklahoma - in 1838 to accommodate the Chickasaws and in 1842 to introduce bicameralism, which increased the weight of the district Pitchlynn called home.<sup>43</sup>

None of the experiments in tribal government prevented removal, though they pioneered new ways of living together that outlasted their uprooting. Both increasing class differences between planters and traditionalists and the United States' incessant manipulation of their governments tended to delegitimize these governments at many points in the tribes' histories. It is therefore fortunate that during the period of experimentation with tribal government, town institutions did not just disappear. Old-fashioned consensual town councils provided the Cherokees in the 1820's with a useful forum for reconciling some violent differences between traditional townsmen and followers of a confrontational Presbyterian missionary. The Six Towns Choctaws held a regional council which deliberated upon the old-fashioned custom of motherinlaw avoidance. The elders decided to eliminate this awkward practice, and persuaded a plucky warrior to cross the square and shake hands with his wife's mother. Creek and Western Seminole transplantation of their more rigid town institutions gave their government a continuity others lacked.<sup>44</sup>

In the mountains of North Carolina, and later in the river valleys of Oklahoma, Evan Jones began an experiment in local self-government known as the Cherokee Baptist Church. He preached, baptized, translated, published, and taught Bible classes for his native assistants. But unlike his Presbyterian brethren, he gave these assistants almost unconditional positive support, and let them run their churches. When his Boston-based Board and the prim New Englanders they sent to help him educate and evangelize complained that the Cherokees weren't supporting their own churches, Jones explained that they

supported their seasonal camp meetings with generous hospitality, which was their way; that they were poor people, and the Board should not begrudge their native ministers their tiny salaries. Jones's son John grew up in the Nation, became fluent in the language as only a native could be, and studied Greek at the Rochester Theological Seminary in order to complete a proper Baptist translation of the New Testament. As the Cherokees' agent, under Grant's Peace policy, he battled with the tribal government for the right to establish bilingual education in the national schools. Some of Evan Jones's native converts, including at least one black, covertly evangelized the Oklahoma Creeks. Between 1822 and 1829, Baptist Lee Compere maintained a precarious mission school in the Eastern Creek Nation and trained a native preacher who began his dangerous evangelical career in the Creek Nation West in 1830. In the 1840's some of the McIntoshes were born again in the Baptist faith, and their council permitted missionaries to go public.<sup>46</sup>

Creek and Cherokee communities in Oklahoma today who choose to maintain their language and their relative isolation may center on a Baptist Church where, to take a Creek example, segregation of the sexes and officers in seating, use of the Creek language, extended camp meetings, and an order of worship showing due respect to fasting and to the sacred numbers four and seven preserve some ancient traditions. In other local Creek, Creek-Seminole, and Cherokee stomp grounds, moved about as privacy or shifting membership requires, the primal fire lingers. At a cost, the small community autonomy dearer to traditionalists and migrants in many places and for many centuries than the 'tribal autonomy' required for successful dealings with outsiders, lingers as well.<sup>46</sup>

One suspects that the spirit of the primal fire lingers in other locations besides the square grounds. Near Gore, Oklahoma, a neighborhood where a Cherokee-Natchez community re-established the only sacred fire the Cherokee emigrants carried on the Trail of Tears, a Cherokee grandmother was reported last month to have won a battle with the Kerr-McGee Corporation. She went to a meeting to protest the corporation's announced intention to inject radioactive waste at the junction of two earthquake-prone faults near her community. A public health official at the meeting advised her that fighting Kerr-McGee was a losing proposition. In the immortal spirit of John Ross, she replied, "Well, buddy, I'm going to give it my best shot." At last report, Kerr-McGee had abandoned two different plans to bury radioactive waste near Gore, and had sold their local plant to another company. Jessie Deer-in-Water was studying to become a lawyer, because, as she said, she guessed she'd be fighting poisons all her life.<sup>47</sup>

This anecdote provides as fitting and as optimistic a provisional conclusion as the ongoing process of southeastern Indian political adaptation is likely to get.

## NOTES

1. Quoted in Andre Paul Du Chateau, "The Creek Nation on the Eve of the Civil War," Chronicles of Oklahoma, 52 (1974-5) 290.

2. For the circumstances of Creek removal see Grant Foreman, Indian Removal: The Emigration of the Five Civilized Tribes (Norman: University of Oklahoma Press, 1932), 108-190; Angie Debo, The Road to Disappearance (Norman: University of Oklahoma Press, 1941), 88-112; Mary Elizabeth Young, Redskins, Ruffleshirts, and Rednecks: Indians Allotments in Alabama and Mississippi, 1830-1860 (Norman: University of Oklahoma Press, 1961), 35-8, 75-106; Michael D. Green, The Politics of Indian Removal: Creek Government and Society in Crisis (Lincoln: University of Nebraska Press, 1982), 126-186; C.B. Clark, "Drove Off Like Dogs" - Creek Removal," in John K. Mahon, ed., Indians of the Lower South: Past and Present (Pensacola: Gulf Coast History and Humanities Conference, 1975), 118-24. For locations of Western Creek Towns, see Du Chateau, "Creek Nation."

3. J. Leitch Wright, Jr., Creeks and Seminoles. Destruction and Regeneration of the Muscogulge People (Lincoln: University of Nebraska Press, 1986) emphasizes the diverse sources of the Creek Confederacy, and asserts that "Catastrophic disease, the desertion of villages, and refugees joining or being incorporated into other tribes were common enough throughout the Southeast after initial European contact." (11) Richard White, The Roots of Dependency: Subsistence, Environment and Social Change among The Choctaws, Pawnees, and Navajos (Lincoln: University of Nebraska Press, 1983) discusses Choctaw absorptions.

On the various circumstances impelling migration, see Robert F. Berkhofer, Jr., Salvation and the Savage (Lexington: University of Kentucky Press, 1965); and J. Leitch Wright, The Only Land They Knew: The Tragic Story of the American Indians in the Old South (NY: Free Press, 1981). Joel W. Martin, Muskogee: The Land, the People, and the Sacred Revolt (Lincoln: University of Nebraska Press, forthcoming) argues that the depopulation of the southeast in the sixteenth and seventeenth centuries made migration a more practicable and attractive way to handle conflict. For the multiple migrations, and the legends, see John R. Swanton, "Modern Square Grounds of the Creek Indians," Smithsonian Miscellaneous Collections 85 (1931), 2-39; Swanton, Indians of the Southeastern United States, Bureau of American Ethnology Bulletin 137 (Washington, D.C.: Government Printing Office, 1946), 81-215; Swanton, Social Organization and Social Usage of the Indians of the Creek Confederacy, Bureau of American Ethnology, 42nd Annual Report. (Washington: Government Printing Office, 1928), 34-73, 262-76. Escaped murderers or adulterers, or other offenders sometimes founded new towns, or joined the Seminoles (357); Swanton, Social and Religious Beliefs and Usages of the Chickasaw Indians, Bureau of American Ethnology, 44th Annual Report (Washington, D.C.: Government Printing Office, 1928), 174-9; Swanton, Early History of the Creek Indians and Their Neighbors Bureau of American Ethnology Bulletin 73 (Washington, Government Printing Office, 1922), 130-414. Swanton here asserts that the Seminoles moved so frequently that it is impossible to give a history of their people by towns (406). A brief survey of Swanton's Indians of the Southeast will show that an analysis of all their political adaptations would be a multi-volume

"tribes" with whom the United States was involved in the period 1800-1840.

4. See n. 3 above. The best introduction to Seminole history and historiography is Harry B. Kersey, Jr., The Seminole and Miccosukee Tribes. A Critical Bibliography (Bloomington: Indiana University Press, 1987). On Seminole migrations, see Charles H. Fairbanks, "The Ethno-Archaeology of the Florida Seminoles," in Jerald Milanich and Samuel Proctor, eds., Tachachale: Essays on the Indians of Florida and Southeastern Georgia in the Historic Period (Gainesville, The University Presses of Florida, 1978), 163-93; Fairbanks, The Florida Seminole People (Phoenix: Indian Tribal Series, 1973), 8-14. Fairbanks, Ethnohistorical Report on the Florida Indians. Commission Findings. Indian Claims Commission (NY: Garland Publishing Company, Inc., 1974) stresses the importance of the amalgamation of early migrants with Apalachee Indians of Florida (p. 114) and offers a highly detailed account of early migrations. He argues that their hunting territory extended to the Keys (140). Alan K. Craig and Christopher S. Peebles, "Ethnoecologic Change Among the Seminoles, 1740-1840," in Man and Cultural Heritage, vol. 5 of Geoscience and Man, Bob F. Perkins, ed. (Baton Rouge, Louisiana State University Press, 1974), 83-96, describes the Seminoles' "remarkable ability to accomplish a swift succession of ethnoecologic change." A comprehensive brief account is William C. Sturtevant, "Creek and Seminole," in Eleanor Leacock and Nancy Oestreich Lurie, eds., North American Indians in Historical Perspective (NY: Random House, 1971), 92-108.

5. Kenneth Wiggins Porter, The Negro on the American Frontier (NY: Arno Press, 1971). Porter says that at the time of the Second Seminole War, four-fifths of the black Seminoles were runaways or captives, a few were legally free, and a few the lawful slaves of the Seminoles, and that nearly all received equal treatment from the Seminoles (238). Some fugitives' villages were not under Seminole control.

6. Fairbanks, Florida Seminole People, 10. In Ethnohistorical Report, Fairbanks argue that the Seminoles' cession to Panton, Leslie, and Company in 1804 showed their "virtually complete" independence from the Creeks. The Creeks began to disavow Seminole actions when Creek "hostiles" joined them in 1813 (212-14). James F. Doster, The Creek Indians and Their Florida Neighbors, 1740-1823 (2 vols. N.Y.: Garland, 1974) argues throughout for persistence of close political relations between the two regional groups.

7. Fairbanks, Ethnohistorical Report, 210-14; Edwin C. McReynolds, The Seminoles (Norman: University of Oklahoma Press, 1957), 50-100.

8. Wright, Creeks and Seminoles, 177-304; John K. Mahon, "The Treaty of Moultrie Creek, 1823," Florida Historical Quarterly 40 (1962), 350-72; Mahon, "Two Seminole Treaties: Payne's Landing, 1832, and Ft. Gibson, 1833, Ibid., 41 (1963), 1-21; Mahon, History of the Second Seminole War, 1835-1842 (Gainesville: University of Florida Press, 1967); McReynolds, Seminoles, 99-276; Porter, Negro Frontier; Daniel F. Littlefield, Jr., Africans and Seminoles. From Removal to Emancipation (Westport, CT: Greenwood Press, 1977), 4-175; Sturtevant, "Creeks into Seminoles" traces Seminole black migrants to colonies in Coahuila, Mexico, and Andros Islands, in the Bahamas, and asserts that modern Florida Seminoles have almost no black ancestry. For the western Seminoles, see Sturtevant, 110-11; Louise Welsh, "Seminole Colonization in Oklahoma," in Arrell F. Gibson, ed.,

America's Exiles: Indian Colonization in Oklahoma (Oklahoma City: Oklahoma Historical Society, 1976), 77-103; Michael E. Welsh, "The Road to Assimilation: The Seminoles in Oklahoma, 1839-1936," (Doctoral Dissertation, University of New Mexico, 1983); James H. Howard in collaboration with Willie Lena, Oklahoma Seminoles. Medicine, Magic, and Religion (Norman: University of Oklahoma Press, 1984); Alexander Spoehr, "Kinship System of the Seminole," Field Museum of Natural History, Anthropological Series, 33, no. 2 (Chicago, 1941-7, 33-113.

9. Craig and Peebles, "Ethnoecologic Change;" Fairbanks, Florida Seminole People, 29-32; 57-81; Sturtevant, "Creek into Seminole," 108-128. Sturtevant estimates that 500 survived in Florida in 1842 of 5,500 present in 1835 (108). Louis Capron, "The Medicine Bundles of the Florida Seminole and the Green Corn Dance," Bureau of American Ethnology, 1953, 155-210, in William C. Sturtevant, ed., A Seminole Sourcebook (NY: Garland, 1987); William C. Sturtevant, "The Medicine Bundles and Busks of the Florida Seminole," Florida Anthropologist 7 (1954), 31-70, in Seminole Sourcebook. Howard, Oklahoma Seminoles, says that both Creeks and Oklahoma Seminoles have had medicine bundles and that this represents an "old Muskogean Complex." (156) R.T. King, "Clan Affiliation and Leadership Among the Twentieth Century Florida Indians," Florida Historical Quarterly 55 (1976-7), 138-52, argues for the continued influence of the clan on formal tribal organizations dominated by Baptists and English-speaking cattle-owners in the 1970's. See also M.S. Garbarino, Big Cypress: A Changing Seminole Community (NY: Holt, Rinehart and Winston, Inc., 1972).

10. One army captain stationed in the Cherokee nation prior to their removal wrote: "The fact of their having submitted for years to every species of oppression tamely and submissively, of having their lands taken from them, being driven out of their houses, deprived of the means of subsistence and still being willing to submit to the rapacity of the white man affords evidence of as strong an attachment to soil as has ever been exhibited by any people." Report of Captain Morrow, July 1, 1837, National Archives Microfilm M567, reel 149. For the Cherokees' resident spirits, see for example James Mooney, Myths of the Cherokee (Washington, DC: Government Printing Office, 1902), 264, 333-4, 329-30, and especially 335-6; 347. The Buzzard explored the earth while its primordial void was drying, and his wings created valleys and mountains at the earth's center which were apportioned to the Principal People: the Cherokee. Duane H. King and Laura H. King, "The Mythico-Religious Origin of the Cherokees," Appalachian Journal 2 (1975), 159-64. The migration legends of the Muskogean people (see note 3, supra) constituted a charter of their occupation of the lands where they finally settled. See John O. McKee, "The Choctaw Indians, A Geographic Study in Cultural Change," Southern Quarterly, 9 (1971), 112.

11. Tom Holm, "Cherokee Colonization in Oklahoma," in Gibson, ed., America's Exiles, argues that Cherokee emigration to the St. Francis Valley began with a few families that were dissatisfied with the Hopewell Treaty of 1785 (60-61). For Lower Towns hostiles and their wanderings, see James Mooney, Historical Sketch of the Cherokee (Chicago: Aldine, 1975), 43ff; Jack Gregory and Rennard Strickland, eds., Starr's History of the Cherokee Indians (Fayetteville: Indian Heritage Association, 1967), 35-40; James H. O'Donnell, III, Southern Indians and the American Revolution (Knoxville: University of Tennessee Press, 1973); Thomas Lawrence Connelly, "Indian Warfare on the Tennessee Frontier, 1776-1794: Strategy and Tactics," East Tennessee Historical Society Publications no. 36

(1964), 3-22; John P. Brown, Old Frontiers. The Story of the Cherokee Indians from Earliest Times to The Date of Their Removal to the West, 1838 (Kingsport, TN: Southern Publishers, Inc., 1938), 161-478; William G. McLoughlin, "Thomas Jefferson and the Rise of Cherokee Nationalism, 1806-1809," in W.G. McLoughlin, Walter H. Conser, Jr., and Virginia Duffy McLoughlin, The Cherokee Ghost Dance: Essays on the Southeastern Indians, 1789-1861 (Mercer University Press, 1984), 73-110.

12. McLoughlin, "Cherokee Nationalism." The impact of United States policy on relations between Eastern and Western Cherokee receives extensive analysis in "Your Great Father: The President," Section 1 of my The American Republic and the Cherokee Nation (in progress).

13. James C. Bonner, "William McIntosh," in Horace Montgomery, ed., Georgians in Profile (Athens: University of Georgia Press, 1958), 114-143. See *supra*, note 2; Grant Foreman, The Five Civilized Tribes (Norman, 1934), 147-272; Angie Debo, The Road to Disappearance (Norman: University of Oklahoma Press, 1940).

14. Arthur F. DeRosier, Jr., The Removal of the Choctaw Indians (Knoxville: University of Tennessee Press, 1970); Angie Debo, The Rise and Fall of the Choctaw Republic (Norman: University of Oklahoma Press, 1934, 1961); Foreman, Indian Removal; Monte Ross Lewis, "Chickasaw Removal; Betrayal of the Beloved Warriors, 1794-1844," (Doctoral Dissertation, North Texas State University, 1981), 66-130. Jackson threatened in 1819 to expel the western Choctaws if he did not get an exchange of land, and to deal with the emigrants if he could not make a treaty. White, Roots, 115.

15. Traditionally, Beloved Men were respected oldsters who counseled a town's civil chief. Hawkins occupied a new status, invented by Alexander McGillivray, a Creek mixed-blood. See *infra*. Merritt B. Pound, Benjamin Hawkins, Indian Agent (Athens: University of Georgia Press, 1951); Florette Henri, The Southern Indians and Benjamin Hawkins, 1796-1816 (Norman: University of Oklahoma Press, 1986). Both of these offer a rather favorable view of Hawkins. For an alternative perspective of Hawkins' "Gaze of Development," see Martin, Muskogee. My own view is that Hawkins might have served Creek interests better in the long run had he proved less well-meaning and less "successful" as a leader of the Creeks. Although in 1802 Hawkins became, officially, agent only to the Creeks, he continued to call councils of the Four Nations to encourage them to punish troublemakers. Henri, Southern Indians and Hawkins, 129.

16. *Ibid.*, 92-100, 103-6.

17. Alexander Spoehr, Changing Kinship Systems. A Study in the Acculturation of the Creeks, Cherokee, and Choctaw. Anthropological Series, Field Museum of Natural History, vol. 33, No. 4 (1940-47), 153-235, charts the long-run shifts to patrilineal and generational systems. Antonio J. Waring, ed., Laws of the Creek Nation (Athens: University of Georgia Press, 1960) reprinted in William E. Sturtevant, editor, A Creek Sourcebook (NY: Garland, 1987). The laws of the Creek National Council are innovative not only in content but in provenance. Town councils customarily acted both as 'courts' and as, in effect, law-givers in civil matters. National Councils in the eighteenth century normally dealt with diplomatic questions-relations with outsiders. In the nineteenth century,

relations with outsiders came to have pervasive internal consequences. The penalty they provided for a widow who remarried before her allotted time was cropping her ears, a penalty the written law also permitted a man to inflict on an adulterous wife. Until Hawkins' death, "rememberers" committed the new laws to memory and recited them on ceremonial occasions with the ancient laws of the nation. When the nation acquired a new agent in 1817, William McIntosh wrote them down; subsequently he persuaded his councils to add to their number. Waring, Laws, introduction; Henri, Southern Indians, 98-9.

18. James Shean McKeown, "Return J. Meigs: United States Agent in the Cherokee Nation, 1801-1823," (Doctoral Dissertation, Pennsylvania State University, 1984) presents a rather unsympathetic view of Meigs as a man who put United State interests far ahead of those of the Cherokee and was much more interested in acquiring land than in 'civilizing' the tribe. Luther H. Barker, "A History of Fort Southwest Point, 1792-1807," East Tennessee Historical Society Publications, No. 46 (1974), 31, note 39, finds that Meigs wrote 212 letters from his agency dealing with land; 155, with crime; and 67 with the civilization program. I am inclined to believe that Meigs' leadership was benign: he gave the Cherokee the means of development (plows, spinning wheels, advice - and in fact, two of his grandchildren) but he left them to work out their political system on their own, and made no bones about his own attachment to U.S. interests. As William McLoughlin puts it, "Rather than the long process through which the Cherokees worked out their own centralized system in 1810, the Creeks had centralization imposed on them by their agent in 1796." Chiefs like Doublehead, who cooperated with Meigs, got the lion's share of annuities. Cherokee Renaissance in the New Republic (Princeton: Princeton University Press, 1986). But after the Cherokees compromised their difficulties in 1810, a single committee representing the tribe controlled the annuities.

19. McLoughlin, Cherokee Renaissance emphasizes the conflicts and challenges Cherokee modernizers faced. His is a splendid diachronic and circumstantial account of Cherokee cultural development which emphasizes the conflicts and challenges the Cherokees faced in working out their new polity. My "The Cherokee Nation: Mirror of the Republic," American Quarterly 33 (1981), 502-24, emphasizes their success in reconciling conflicting perspectives and interests. Rennard Strickland, Fire and the Spirits: Cherokee Law from Clan to Court (Norman: University of Oklahoma Press, 1975) is especially effective in placing the nineteenth century laws in the context of the traditional legal system, and in emphasizing the persistence of certain features of that system. In 1818, Charles Hicks, assistant to Chief Pathkiller, reported that the Cherokee council was composed of the chiefs from each of the clans. Swanton, Indians of the Southeastern United States, 654.

20. Supra, note 19, and Theda Perdue, Slavery and the Evolution of Cherokee Society, 1540-1866 (Knoxville: University of Tennessee Press, 1979); Henry T. Malone, Cherokees of the Lower South: A People in Transition (Athens: University of Georgia Press, 1956); Constitution of the Cherokee Nation, July 26, 1827 (Milledgeville: Office of the Statesman and Patriot, 1827); Constitution and Laws of the Cherokee Nation (Gales and Seaton, 1840); Laws of the Cherokee Nation adopted by the Council at Various Periods (Cherokee Advocate Office: Tahlequah, 1852) Kraus Reprint edition microfilm, reel 1.

21. Waring, Laws of the Creek Nation. On the impact of Cherokee slavery, see Perdue, Slavery and the Evolution of Cherokee Society. On Creek slavery, see Daniel F. Littlefield, Africans and Creeks: From the Colonial Period to the Civil War (Westport, CT: Greenwood, 1979). Legal status wasn't everything, even for slaves. A missionary to the Choctaws reported that "sometimes the slave is practically above the master in the management of affairs." John Edwards, "The Choctaw Indians in the Middle of the Nineteenth Century," Chronicles of Oklahoma 10 (1932), 423. For Creek relations with missionaries, Grant Foreman, The Five Civilized Tribes (Norman: University of Oklahoma Press, 1934), 166-218. In 1836, the Creeks tried to kill "abolitionist" missionaries and resented their teetotalism as well: "Go teach your white men who cheat and lie and get drunk before you come to us," was their message. (quoted p. 169, no source given.)

22. H.B. Cushman, History of the Choctaw, Chickasaw, and Natchez Indians (Greenville, TX: Headlight Printing Co., 1899; reprint Stillwater, OK: 1962), 67-77, 84. Angie Debo, The Rise and Fall of the Choctaw Republic (Norman: University of Oklahoma Press, 1934), 43-4; Arrell M. Gibson, The Chickasaws (Norman, 1971), 106-15. One may reasonably regard these appropriations as indicative of good relations between missionary educators and tribal leaders, through the Chickasaw council that appropriated \$2500 annually for the support of schools complained in 1824 of the amount of time missionaries spent building churches and preaching. Ibid.

23. Cushman, Choctaw, Chickasaw, 88-9; Debo, Choctaw Republic, 45-8.

24. Debo, Choctaw Republic, 48-9; Edwards, "Choctaw Indians," 395-6 argues that the effort to depose Moshulatubbee, the eldest of the remaining traditional chiefs, occurred because he was "intemperate"; DeRosier, Removal of the Choctaw, 90-103. The Treaty of 1820 provided that the U.S. would support ten lighthorsemen in each district to maintain order and enforce the payment of debts. Kappler, Treaties, 193-4. The Northeastern District established such a cadre in 1821. W. David Baird, Peter Pitchlynn: Chief of the Choctaws (Norman: University of Oklahoma Press, 1972), 21; White, Roots, 120-27.

25. DeRosier, Removal of the Choctaw, 95-166; Debo, Rise, 51-6; Young, Redskins, 14-34, 51-65; Grant Foreman, Indian Removal: the Emigration of the Five Civilized Tribes of Indians (Norman, 1932), 25-228; White, Roots, 138-144; Rex Syndergaard, "The Final Move of the Choctaws, 1825-1830," Chronicles of Oklahoma 52 (1974-5), 207-219.

26. On the Mississippi Choctaws, see Jesse D. McGee and Jon A. Schlenker, The Choctaw: Cultural Evolution of a Native American Tribe (Jackson: University of Mississippi Press, 1980), 96-149; Clara Sue Kidwell and Charle Roberts, The Choctaws (Bloomington: Indiana University Press, 1980), 67; Samuel J. Wells and Roseanna Tubby, eds., After Removal: The Choctaw in Mississippi (Jackson: University Press of Mississippi, 1986); Young, Redskins, 51-65; John H. Peterson, Jr., "Three Efforts at Development among the Choctaws of Mississippi," in Williams, ed., Southeastern Indians, 142-51; Jesso O. McKee, "The Choctaw Indians: A Geographic Study in Cultural Change," Southern Quarterly 9 (1971), 104-41; John H. Peterson, Jr., "Assimilation, Separation and Out-Migration in an American Indian Group," American Anthropologist 74 (1972), 1286-9. On the Cherokees, John R. Finger, The Eastern Band of Cherokees, 1819-1900 (Knoxville:

University of Tennessee Press, 1984); William H. Gilbert, Jr., "Eastern Cherokee Social Organization," in Fred Eggan, ed., Social Anthropology of the North American Tribes (Chicago: University of Chicago Press, 1937, 1955), 285-340; Charlotte Neely, "Acculturation and Persistence among North Carolina's Eastern Band of Cherokee Indians," in Williams, ed., Southeastern Indians, 154-73. On the Seminoles, Harry A. Kersey, Jr., "Those Left Behind: The Seminole Indians of Florida," in Williams, ed., Southeastern Indians, 174-91; and Kersey, Pelts, Plumes, and Hides: White Traders among the Seminole Indians, 1870-1930 (Gainesville: University Presses of Florida, 1975); James W. Covington, "Seminole Leadership: Changing Substance, 1858-1959," Tequesta 40 (1980) 31-8. See also supra, note 9.

27. Swanton said that the Creek and Seminole had the most highly developed institutions and were slowest to assimilate new social and political organization from Europe; the Chickasaw were next to them, and the Cherokee and Choctaw the most rapid in adaptation. John R. Swanton, Source Material for the Social and Ceremonial Life of the Choctaw Indians Bureau of American Ethnology Bulletin 103 (Washington, D.C.: Government Printing Office, 1931), 2. Spoehr, Changing Kinship Systems, 199-200, places the Choctaws at the most "acculturated" end of the spectrum and notes similarities between the Cherokees and Creeks. Spoehr was trying to prove that the extent of shifts from the Crow-type kinship systems paralleled the extent of acculturation in other realms.

28. William G. McLoughlin and Walter Conser, "The Cherokee Censuses of 1809, 1925, and 1835," in McLoughlin et. al., Ghost Dance, p. 230, conclude that federal agents and missionaries "seem to have greatly exaggerated the amount of intermarriage with whites, presumably because those officials came in contact predominantly with families of this kind." Their analysis of the Cherokees' 1835 census indicates that 69.5% of Cherokee families were composed entirely of fullbloods, and only 17.9% contained no fullbloods. Since many intermarried whites and mixed bloods had prudently taken themselves and their movable property to the west in the five years between the extension of Georgia law over the Cherokee and the taking of the census, it probably undercounts the proportion of people with mixed ancestry. It may well be also that many Cherokees did not know of, or did not care to acknowledge, white ancestors they actually had.

29. Swanton, Creek Confederacy is the classic portrait of traditional Creek government and society. A good brief summary may be found in Green, Politics of Indian Removal. For the Cherokees, Fred Gearing, Priests and Warriors. Social Structures for Cherokee Politics in the 18th Century, American Anthropological Association, Memoir 93, vol. 64, October, 1962 is the classic portrayal. For an alternative, more legalistic view, see John Philip Reid, A Law of Blood: The Primitive Law of the Cherokee Nation (New York: New York University Press, 1970). No similar analysis is available for the Creeks.

30. David H. Corkran, The Creek Frontier, 1540-1783 (Norman, 1967); Corkran, The Cherokee Frontier: Conflict and Survival 1740-62 (Norman: University of Oklahoma Press, 1962); William Shedrick Willis, Colonial Conflict and the Cherokee Indians, 1710-1760 (Doctoral Dissertation, Columbia University, 1955); White, Roots, contains the most sophisticated analysis of the manner in which market changes, diplomatic pressures, and ecological transformations affected

Choctaw society. For the Chickasaws, see Arrell M. Gibson, The Chickasaws.

31. The most rigorous study is McLoughlin and Conser, "Cherokee Censuses," which gives a count for 1835. Samuel J. Wells, "Mixed Bloods in Choctaw History," in Wells and Tubby, eds., After Removal, 42-55, estimates mixed-blood households at the time of removal at "at least 1,000, or roughly 20 per cent of the tribe." He bases the count on non-Indian names in the Armstrong Roll. Since Christian converts and even school children could get "non-Indian" names as a gift from missionary mentors, and some had been getting them for a dozen years before the Armstrong rolls, this methodology is not perfect. On the other hand, many persons with white ancestry probably never took non-Indian names.

32. An instructive source of information on the eighteenth century traders and the many roles they filled is Samuel Cole Williams, ed., Adair's History of the American Indian (New York: Promontory Press, 1930). See also note 30, *supra*. Gary C. Goodwin, Cherokees in Transition: A Study of Changing Culture and Environment Prior to 1775 (Chicago: The University of Chicago Department of Geography, 1977) has excellent information on trade and traders. For Creek traders and mixed-bloods see Thomas S. Woodward, Woodward's Reminiscences of the Creek, or Muscogee Indians. Contained in Letters to Friends in Georgia and Alabama (Birmingham: Birmingham Book Exchange, 1939 (1959); John Walton Caughey, McGillivray of the Creeks (Norman: University of Oklahoma Press, 1939); Littlefield, Africans and Creeks, 33-86; H.S. Halbert and T.H. Ball, The Creek War of 1813 and 1814; Edited with introduction and notes by Frank L. Owsley, Jr. (University, Alabama: Alabama State University Press, 1969 (1895); Benjamin Hawkins, A Sketch of the Creek Country. Georgia Historical Society Collections, vol. 3, part 1 ((Savannah: for the Society, 1848) NY: Kraus Reprint, 1971); Hawkins, Letters of Benjamin Hawkins, 1796-1806. Georgia Historical Society Collections, vol. 9 (Savannah: The Morning News, 1916). Martin, Muskogee, offers a schematic diagram indicating the potential influence of mixed bloods over four generations, and a splendid analysis of the manner in which the intrusion of "free" market relations and class divisions embittered relations between some mixed-bloods and full-bloods. Wright, Only Land They Knew, 235-6, argues that by 1800, "it was almost impossible to find a pure blooded chief of any consequence. After the Creeks relocated in Oklahoma reportedly not one hundred out of twelve thousand could prove they had no mixed blood." The Charles Town archives list 100 traders before 1715 active among Cherokees, Choctaws, Chickasaws, and other tribes. Harriet Simpson Arnow, Seedtime on the Cumberland (University Press of Kentucky, 1983 (1966)) p. 84. With the influx of Tories after the Revolution, Caleb Swan estimates an average of three whites in each town connected with trade, and a family or two besides. His total count was 300 whites (1791). "Position and State of Manners and Arts in the Creek, or Muskogee Nation," in Henry Rowe Schoolcraft, Information Respecting the History and Prospects of the Indian Tribes of the United States (Part V. Philadelphia: Lippincott, 1855) 263. Cushman, Choctaw, Chickasaw and Natchez offers useful biographical and descriptive information.

33. Starr's History provides the genealogical data, which also reveals the female lineage by which Cornelius Dougherty's heritage passed to Lewis Downing, a prominent Baptist minister and political figure of the mid-nineteenth century. Williams' introduction to Adair's History provides his story.

34. On Ridge, see Thurman Wilkins, Cherokee Tragedy: The Ridge Family and the Decimation of a People (Norman: University of Oklahoma Press, second edition, 1986); on the "stripling" see Adair's History, 162. Benjamin W. Griffiths, McIntosh and Weatherford: Creek Indian Leaders (Lincoln: University of Nebraska Press, 1988) contains useful information on the influence of the matrilineage.

35. Starr's History; Henry T. Malone, Cherokees of the Old South: A People in Transition (Athens: University of Georgia Press, 1956); Wilkins, Cherokee Tragedy; Gary E. Moulton, John Ross, Cherokee Chief; Grace Steele Woodward, The Cherokees (Norman: University of Oklahoma Press, 1963); Ralph H. Gabriel, Elias Boudinot, Cherokee and His America (Norman: University of Oklahoma Press, 1941); William G. McLoughlin, "James Vann: Intemperate Patriot, 1768-1809," in McLoughlin et al., eds. Cherokee Ghost Dance, 39-72; R. Halliburton, Jr., "Chief Greenwood Leflore and his Malmaison Plantation," in Wells and Tubby, eds., After Removal, 56-64; Cushman, Choctaw, Chickasaw and Natchez; Debo, Choctaw Republic.

36. Hawkins issued permits to hunt, purchase horses, buy and sell slaves, and manumit slaves; he adjudicated damage claims, authorized and paid for the return of stolen horses, married people and doctored them. Henri, Southern Indians, 127. In the town square, he sat in the Micco's cabin. (Sketch, 68-72). He took the black drink with old men in the Tuckabatchee Town House, and reported that he spent his days with the Indians in their public meetings, at their homes, traveling, and entertaining them in his own home (Letters, 38, 232). Apparently, like McGillivray, he offered unbounded hospitality (Caughy, McGillivray, 3). Apparently, also like McGillivray, he did not hesitate to encourage his law-menders (a version, after all, of the old war organization) to use extreme measures to enforce orderly behavior. When some Tallassees robbed a surveyor's camp, Creek Light Horse, on orders of the National Council, beat them, stuck a stick up the leader's rectum, and destroyed his property. (Henri, Southern Indians, 215-17). He believed that the law for punishing thieves would be carried into effect only where he exerted his personal influence, and assured nervous law-menders that he would be responsible for the consequences (Sketch, 51-68). For McGillivray see Michael D. Green, "Alexander McGillivray," in R. David Edmunds, ed., American Indian Leaders: Studies in Diversity (Lincoln: University of Nebraska press, 1980), 41-63. Morris Opler reported in 1952 (on the basis of field work he did in the late thirties) that Creeks referred to people of the opposite moiety as "my enemy town," or "my unfriendly Town." "The Creek 'Town' and the Problem of Creek Indian Political Reorganization," in Edward H. Spicer, ed., Human Problems in Technical Change (New York: Russell Sage Foundation, 1952), 165-80. Wright, Creeks and Seminoles, 117, emphasizes ethnic diversity, and argues that "The countervailing tendency was to maintain the status quo, the identity of ethnic minorities, the autonomy of the Talwas, and the non-Muskogee opposition to a Muskogee-dominated National Council." Doster, Creek Indians, 29, 40, 72, reports that Upper and Lower Creeks in May, 1811, [followed the Cherokee example] by meeting at the home of the Tame King and setting up an executive committee of the nation to meet alternatively at Tuckabatchee or Coweta. Apparently, the Creeks caught the words but not the music of the Cherokee example, since they also deposed the Tame King, who took his revenge two years later by directing hostilities toward law-menders from his rival, Big Warrior's Tuckabatchee, which helped touch off the Creek War in 1813.

37. On ethnohistorical dimensions of the Creek War and its extension to the Seminoles, see Wright, Creeks and Seminoles; Green, Politics of Indian Removal; Henri, Southern Indians; Halbert and Ball, Creek War; Woodward, Reminiscences; Douglas Barber, "Council Government and the Genesis of the Creek War," Alabama Review 38 (1985), 163-74; and Ross Hassrig, "Internal Divisions and the Creek War of 1813-1814," Ethnohistory 21 (1974), 251-71. Martin, Muskogee, offers a brilliant interpretation of the development of hostilities between fullbloods and mixed-bloods and whites, which should be supplemented by Henri's discussion of Panton, Leslie, and Company's debt-collecting activities. Two prominent "hostile" mixed-bloods, Peter McQueen and Josiah Francis, were heavily in debt to that company and betrayed great fury at the skimpy presents John Innerarity offered them on their last visit to Pensacola (Henri, Southern Indians, 277-8, 283). Martin also gives the revitalizing religious experience of the prophetic movement its due weight, and offers a brilliantly empathic and imaginative reconstruction of its impact. Anthony F.C. Wallace, who pioneered the "revitalization" theory, derived it from a very broad range of examples, but developed it most fully in The Death and Rebirth of the Seneca (New York: Random House, 1972 (1969)). Wallace was particularly struck by the "therapeutic" effect of Handsome Lake's teachings in diminishing alcoholism and intergroup conflict among the Seneca. As he indicates, however, the Seneca were one of the few tribes in which revitalization passed into a final "steady state;" the Creeks enjoyed no such luxury. Wallace, "Revitalization Movements," American Anthropologist 58 (1956), 264-81. Wallace was writing in terms of the functionalist equilibrium theory popular in the fifties, and probably appreciated the steadiness of the Seneca's achieved equilibrium more than the nineteenth century Seneca did. Theron A. Nunez, Jr., "Creek Nativism and the Creek War of 1813-1814," Ethnohistory 5 (1958), 1-47; 131-175; 292-301, reprints George Stiggins's account of the war and offers some interesting commentary on it. Nunez was summarizing a master's thesis, and may perhaps be forgiven for a distressingly reductionist, mechanistic, and manipulative interpretation of Creek revitalization. McLoughlin, in Cherokee Renaissance and Cherokees and Missionaries, 1789-1839 (New Haven: Yale University Press, 1984), applies the revitalization thesis to the Cherokees quite discerningly.

38. Three hundred people, most of them mixed-bloods, died at Ft. Mimms. The 857 who perished at Horseshoe Bend represented the heaviest loss any Indian tribe of the United States experienced in a military encounter. We do not know how many of the warriors involved were of mixed genetic heritage. Michael Rogin's assessment of Jackson's stake in the encounter seems to me realistic, as far as it goes, though it expresses perhaps too much reality to have gained general scholarly acceptance. Fathers and Sons: Andrew Jackson and the Subjugation of the American Indian (New York: Knopf, 1975).

39. On the destruction of Cherokee towns, see Mooney, Historical Sketch, and Wilkins, Cherokee Tragedy. McLoughlin, "Ghost Dance," and "Cherokee Nationalism," analyze the background of Cherokee rejection of Tecumseh, and Wilkins, Cherokee Tragedy offers an excellent account of Ridge's opposition to Tecumseh and of Cherokee participation in the war. For the participants' role as delegates, see Kappler, Indian Treaties, 125, 179.

40. The United States' irregular but selectively effective sponsorship of individual emigration among the Eastern Cherokee functioned as a safety-valve for discontented elements for thirty years. On early harmonic movements, see McLoughlin, "Ghost Dance," Cherokee Renaissance; and Wilkins, Cherokee Tragedy; on White Path, see McLoughlin, Cherokee Renaissance and Cherokees and Missionaries; Young, "Cherokee Nation," Maron Starkey, The Cherokee Nation (NY: Russell and Russell, 1972 (1946), 104-5; and Young, "American Republic," Section II: "The Sovereign States." For suggestions as to how the Cherokee harmony ethic may have been transmitted to younger and "whiter" generations, see Albert Warshafitig, "Institution Building Among Oklahoma's Traditional Cherokee," in Charles M. Hudson, ed., Four Centuries of Southern Indians (Athens: University of Georgia Press, 1975), 132-47; Raymond Fogelson, "Cherokee Conceptions of Power," in Fogelson and Richard N. Adams, The Anthropology of Power (New York: Academic Press, 1977); and Fogelson's brilliant review of Gearing's Priests and Warriors, American Anthropologist 63 (1963), 726-730. The religious matrix of the ethic is expounded in Charles H. Hudson, The Southeastern Indians (Knoxville: University of Tennessee Press, 1976).

41. On factionalism, the removal treaty of New Echota, and its aftermath, see Wilkins, Cherokee Tragedy; Moulton, John Ross; McLoughlin, Cherokees and Missionaries; Young, "Cherokee Nation;" Young, "Indian Removal and the Attack on Tribal Autonomy," in Mahon, ed., Indians of the Lower South, 125-142; and Theda Perdue, ed., Cherokee Editor: The Writings of Elias Boudinot (Knoxville, University of Tennessee Press, 1983).

42. W. David Baird, The Chickasaw People (Phoenix: American Indian Tribal Series, 1974); Gibson, Chickasaws; Lewis, Chickasaw Removal; Young, Redskins; Cushman, Choctaw, Chickasaw, and Natchez; Muriel Wright, A Guide to the Indian Tribes of Oklahoma, (Norman, 1951), 86-91; Guy B. Bradon, "The Colberts and the Chickasaw Nation," Tennessee Historical Quarterly 17 (1958), 222-49; 318-335. Constitution, Laws, and Treaties of the Chickasaws (Tishomingo City: J. Foster, 1860) Kraus reprint microfilms, reel 3, Polygamy will not be tolerated "from and after the adoption of this constitution." (p. 6).

43. Baird, Pitchlynn: Constitution and Laws of the Choctaw Nation (Park Hill, Cherokee Nation, 1840). and Constitution and Laws of the Choctaw Nation (Park Hill, Cherokee Nation: Mission Press, 1847), Kraus reprints microfilm, reel 5. Unlike the Mississippians, the Choctaws referred to the two houses of their legislature as "the older house" and "the younger house." John Edwards, "The Choctaw Indians in the Middle of the Nineteenth Century," Chronicles of Oklahoma 10 (1932), 392-425.

44. Young, "Indian Removal;" Edwards, "Choctaw Indians," 403. The brave young warrior became the Choctaw's first native Presbyterian minister. Wallace, Seneca, discusses the usefulness of traditional councils in deliberating and selectively adopting innovations of various sorts.

45. McLoughlin, Cherokees and Missionaries discusses Jones's mission; he will shortly publish Champions of the Cherokee: Evan and John B. Jones (Princeton University Press, forthcoming). McLoughlin's fascinating studies appreciate and illuminate the Jones contributions, but my view of Jones, based on my reading of

his correspondence in the American Baptist Historical Society, Rochester, NY, and that of the American Board missionaries in the Houghton Library, Harvard University, is more enthusiastic and less detached and critical than McLoughlin's. Mary Young, "Indian Removal: Civilization's Doom or Holy Opportunity?" Paper delivered at the Cherokee conference, Western Carolina University, Cullowhee, North Carolina, 1983. On Creek Baptists in the 1820's, 30's, and 40's see Green, Politics of Indian Removal; Debo, Road to Disappearance, and Foreman, Five Civilized Tribes. For the later twentieth century, see Sharon A. Fife, "Baptist Indian Church: Thlewarle Mekkocsapkv Coko," Chronicles of Oklahoma 48 (1970), 45-66.

46. Gary C. Anders, "The Internal Colonization of Cherokee Native Americans," Development and Change 10 (1979), 41-55 estimates that there are 21,000 traditional Cherokee in Northeastern Oklahoma who try to retain their language and culture. J.N. Hadley, "Notes on the Socio-Economic Status of the Oklahoma Seminoles," in "The Physical Anthropology of the Seminole Indians of Oklahoma," by Milton Marion Krogman. Comitato Italiano per lo Studio dei Problemi della Popolazione (Rome, 1935) Serie III, vol. II, 133-59, in Sturtevant, ed., Seminole Sourcebook asserts that all Northeastern and Southeastern tribes except the Choctaws have (1935) the stomp dance, and that as late as 1912, some people attended both Christian camp meetings and Green Corn feasts either as visitors or as participants. Howard and Lena, Medicine Bundles, find six active squaregrounds among Oklahoma Seminoles (1984) and assert that some organized bands and towns converted to Christianity en masse (105). Martha Etheridge Jordan, Politics and Religion in a Western Cherokee Community (Doctoral Dissertation, University of Connecticut, 1975) offers a fascinating history of the revival of the stomp dance ground in Oklahoma, an analysis of successive community conversions between the stomp dance and the Baptist church, and a rather jaundiced analysis of both the Cherokee Baptist Church and the Western Cherokee Nation. Albert Wahrhaftig, "More than Mere Work: The Subsistence System of Oklahoma's Cherokee Indians," Appalachian Journal 2 (1975), 327-31, discusses mapping 70 Oklahoma Cherokee settlements (in 1964) along creeks of the isolated Ozark hollows of Eastern Oklahoma. The ceremonial center of each was a Cherokee Baptist Church or a stomp ground. Janet Campbell and Archie Sam, "The Primal Fire Lingers," Chronicles of Oklahoma 53 (1975-6), 463-75, identifies five Cherokee tribal towns which practice ceremonies hundreds of years old; Amelia Bell asserts that in 1980 there were 20 active Creek and Creek-Seminole Stomp grounds in Oklahoma, a number equal to though not continuous with the number of ceremonial ground Swanton documented in 1929 (Amelia Bell Walker, "Tribal Towns, Stomp Ground, and Land: Oklahoma Creeks After Removal," MS, Chicago Anthropology Exchange). On the persistence of Creek Town identity, see Opler, "The Creek Town."

47. Campbell and Sam, "Primal Fire," 464-5; Nancy Hanback Perrault, "My mom fights poison for a living," Mother Jones 14 (January, 1989), 30-31.

## THE ALCALDES: INDIAN LEADERSHIP IN THE SPANISH MISSIONS OF CALIFORNIA

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The mission served as the primary vehicle in the colonization of California, not because it was thought to be the most suitable institution for the undertaking but because the Spanish civil authorities lacked the men, money and motivation to thoroughly occupy the region. California would become an important outpost in the empire only if the Indians indigenous to the area were, in Spanish terms, "civilized." By congregating them into the missions, by converting them to Christianity, and by teaching them the arts and sciences of Europe, the Franciscan missionaries would turn the Indians into loyal subjects of the crown and dedicated believers in Christ.<sup>1</sup>

Many of the so-called Spaniards who arrived in California were of mixed ethnic and racial backgrounds. But as gente de razon, or people of reason, they considered themselves distinct from and superior to both the unconverted Indians and the neophytes of the missions. Their group identity was shaped not so much by their common interests as by their insignificant numbers. Residing at each mission were two priests, five to ten soldiers, a few artisans and in time wives and children.<sup>2</sup>

At their peak, most of the missions comprised a neophyte population of several hundred; a few totalled between one and two thousand. Large numbers of Indians were needed to keep the mission operational. Neophytes planted, tended, and harvested wheat, barley, corn, peas, beans and other crops. Equipment was manufactured in the shops where Indians made brick, tiles, pottery, shoes, saddles, hats, clothes, candles and soap. Tanning, shearing, spinning, and blacksmithing were other tasks undertaken by the neophytes. A select few tended the herds of cattle, sheep and horses that grazed on the several ranchos possessed by each mission.<sup>3</sup>

The hierarchical structure of the mission is aptly described by Pablo Tac, a neophyte who in the 1830s wrote a brief account of his mission while in Rome.

In the Mission of San Luis Rey de Francia the Fernandino Father is like a king. He has his pages, alcaldes, majordomos, musicians, soldiers.... The pages are for him and for the Spanish and Mexican, English and Anglo-American travelers. The alcaldes to help him govern all the people ... The majordomos are in the distant districts, almost all Spaniards. The musicians...for the holy days and all the Sundays and holidays of the year, with them the singers, all Indian neophytes. Soldiers so that nobody does injury to Spaniard or to the Indian; there are ten of them and they go on horseback.<sup>4</sup>

Of all the privileged neophytes mentioned by Tac, the alcalde was the most important. In December 1778, Governor Felipe de Neve issued a decree stating that the resident neophytes at each mission should elect from their own ranks two alcaldes, or magistrates, and two regidores, or councilmen. His intent was to prepare Indians for self-government when the missions were turned into

pueblos. The alcaldes were to possess limited authority over the other neophytes and were to be exempt from corporal punishment.<sup>5</sup>

Theoretically, the evolution from mission to pueblo was to be achieved in ten years at each establishment. The missionaries would then move on to new frontiers to begin the colonization process anew. In practice, however, the missionaries extended the timetable for secularization throughout the entire mission period, never acknowledging that the neophytes at any mission were prepared to assume control over their own affairs.<sup>6</sup>

Father Fermin Francisco de Lasuen of Mission San Carlos initially refused to implement the order. Writing to the governor in January 1779, he claimed that it required the approval of the Father President, Junipero Serra, "without whose sanction we are not to introduce in the management of the missions any modification whatever in the system and method in which the missionaries have been trained."<sup>7</sup> In late March Serra wrote to Lasuen suggesting that they should conform to the decree "but in such a way that it cannot cause the least commotion among the natives. ... Let Francisco with the same baton and coat ... be the first alcalde. It is nothing more than a change in the name. Let the chief of one of the rancherias ... be the other alcalde."<sup>8</sup>

Within a month of issuing the decree, the governor reported that elections had been held at five missions.<sup>9</sup> Things did not always go according to plan, however. Writing to Lasuen in August 1779, Serra complained that an Indian alcalde at San Luis Obispo had utilized his office to indulge in numerous crimes and that he and the other officers "really thought they were gentlemen."<sup>10</sup>

Early the following year, Serra wrote to Lasuen about an alcalde at Mission San Carlos: "Baltasar, while in office as alcalde, once aware of his privileges and exemption from correction by the Fathers began to do just as he pleased. He had ... a California Indian flogged because he carried out an order from the Father missionary."<sup>11</sup>

Reflecting on the decree a few years later, Lasuen concluded "that the institution of alcaldes and regidores in the missions was untimely and unduly legalistic, for it makes such persons independent of the missionaries as regards punishment and dismissal from office when they deserve it, and it makes these officials lazy and haughty, connivers at wrong doing and partners in it." While on a visit to Mission San Diego, Lasuen convinced the padres there that the decree was invalid because the election was to be held under the supervision of parish priests. Because no parish priests were then in California, the decree could not be implemented. Subsequently, the missionaries at San Diego appointed individuals to serve as alcaldes who "had the best reputation since their conversion from paganism."<sup>12</sup>

Throughout the following decade, elections were held only intermittently, if at all, at most of the missions. In 1796, however, the new governor pressured the Franciscans to conform to the decree, and in November Lasuen, now Father President, sent a circular to the missionaries, instructing them to hold elections. Thereafter, on the first of January, two alcaldes and two regidores were "elected" at each mission for a one-year term.<sup>13</sup>

The missionaries made sure that only the most trusted and acculturated Indians became alcaldes. According to Pablo Tac, the Franciscans "appointed alcaldes from the people themselves that knew how to speak Spanish more than the others and were better than the others in their customs."<sup>14</sup> A British naval officer noted in late 1826 that "the Padre selects one or more of those amongst his Indians he considers the most trustworthy and places him over the others as Alcalde with an increased quantity of Rations and some few privileges

by way of distinction."<sup>15</sup> A Scot, Hugo Reid, who arrived in southern California in 1832, claimed that the *alcaldes* at Mission San Gabriel "were appointed annually by the Padre, and chosen from among the very laziest of the community; he being of the opinion that they took more pleasure in making others work, than would industrious ones!"<sup>16</sup> Visiting missions San Carlos, Santa Barbara and San Diego in 1831, an American reported that "A few of the Indians, in whom the Padres had confidence, were selected to act as *alcaldes* or *capitanes*, each over a certain number, for whose good conduct he was held in some degree responsible. If any offense against regulations of the Mission was committed, the case was reported to the Padre, who determined what punishment should be inflicted on the culprit."<sup>17</sup>

Lorenzo, an Indian who resided at Mission Santa Cruz, recalled late in his life that the neophytes "were governed somewhat in the military style, having sergeants, corporals, and overseers, who were Indians, and they reported to the padres any disobedience or infraction of the rules, and then came the lash without mercy, the women the same as the men."<sup>18</sup> Reid noted that the *alcaldes* "carried a wand to denote their authority, and what was more terrible, an immense scourge of raw hide, about ten feet in length, plaited to the thickness of an ordinary man's wrist! -- They did a great deal of chastisement, both by and without orders."<sup>19</sup>

An American visitor to Mission San Luis Rey remarked that the *alcaldes* "are very rigid in exacting the performances of the allotted tasks, applying the rod to those who fall short of the portion of labor assigned them."<sup>20</sup> Another visitor to the same mission declared that while the majority of the neophytes attended mass on their own, "it is not unusual to see numbers of them driven along by the *alcaldes*, and under the whip's lash forced to the very doors of the sanctuary."<sup>21</sup> According to Lorenzo, "We were always trembling with fear of the lash."<sup>22</sup>

In his memoirs, former governor of California Juan Bautista Alvarado described some of the duties of the *alcaldes*.

They kept a constant watch over the movements and discussion of the other neophytes, reporting and arresting all those who committed any criminal act, or who were remiss in the fulfillment of the obligation imposed upon them of sharing the work of the community, or who failed to carry out the orders of the padre in any other connection ... When it came time for evening prayers, the *alcaldes* used to gather together all the unmarried women and lock them up in a large building called the "Monjerio" and after the doors were locked appointed one or two sentinels to make the rounds of the building during the night and prevent any man from getting into that house. The single men were likewise locked up in another building, known as the "Tayunque". ... The rooms in which the catechumens were locked up were guarded throughout the night by the *alcaldes*, who used to deposit the keys of these moralizing prisons with the mission priest. The *alcaldes* were obligated, moreover, to report to the commander of the garrison any extraordinary disturbances that might take place during the night.<sup>23</sup>

Mission social structure accounts in large measure for *alcalde* behavior. The Spaniards comprised the institution's staff. As the dominant cultural section that formed only a tiny minority of a mission's population, they spent much of their time maintaining sectional identities and boundaries and thus

preserving their special position. In contrast, the neophytes of the mission formed a cultural section that constituted a population majority with distinct burdens and disabilities. As the inmates of the mission, they were subjected to various kinds and degrees of punishment--flogging, imprisonment, demotion and food cutbacks.<sup>24</sup>

Because social identity was ascriptive, the neophytes could not change their sectional status. Even those who became alcaldes and thus acquired some power and authority were prevented from transferring into the dominant cultural section. The cruelty they exhibited toward the neophytes under their control probably reflected the frustrations they felt at being rejected by the very group they sought to emulate and please. Because of this rejection, many alcaldes became the most discontented of all the neophytes.<sup>25</sup>

It is no coincidence that many of the most prominent Indian resistance leaders who emerged in the interior during the 1820s and 1830s once had been alcaldes. Yoscolo, Estanislao and Andres became the most widely known. But Cipriano, Narciso, Jose Jesus and others were equally as effective in damaging the mission system. Not only did they take with them into the interior neophytes from several missions, but some also organized and led raids upon the missions and, later, Mexican ranchos for stock.<sup>26</sup>

Most of the mission refugees who resettled in the San Joaquin Valley became dedicated enemies of the coastal Hispanics. An American military officer reported in 1849 that neophytes "are leaders ... in all acts of hostility against the whites."<sup>27</sup> The same year a naval officer wrote that "many of those who were once the best of Indian Christians are now the very worst of horse-thieves."<sup>28</sup> John Marvin, an astute observer of Indian life, acknowledged in the early 1850s that mission Indians "commonly lead thieving parties to the ranches and towns for plunder."<sup>29</sup>

Marvin also commented on the complexity of Indian political organization in the interior.

The system of government which hold among the Indians, is far more complicated than would be generally supposed. In addition of the Alcaldes, Judges of the Peace, &., they elect Commissary Generals, Chiefs of Division, &., &., to all of whom certain duties and certain honors pertain, which are eagerly sought after. In an Indian village of 500 persons, more officers would be found than in any Spanish or American town of thrice the number of inhabitants."<sup>30</sup>

Whether this political organization was an aboriginal or post-Contact development was not addressed by Marvin. But certainly the large influx of neophytes into the San Joaquin Valley, especially during the late 1830s when the mission system collapsed, contributed to the process of political centralization.

By the 1850s, many neophytes had gained political power within interior villages. Reporting in 1849, an American noted that "Renegade Christian Indians who by their superior tack and intelligence have risen to a controlling influence among these Indians."<sup>31</sup> In 1851, an army officer met a neophyte from Mission San Luis Obispo governing 100 Tache Yokuts at the southern end of Tulare Lake. On the southeast end, a neophyte from San Miguel ruled another Tache village. The officer also visited two large villages on the eastern side of the lake. A non-mission Indian called De-e-jah controlled one; Francisco, a neophyte from San Luis Obispo, was in charge of the other.<sup>32</sup>

Further evidence of the political dominance of neophytes comes from the treaties negotiated between Indians of the San Joaquin Valley and the United States Government in 1851. All twenty-nine leaders who signed the treaty conducted in the southern end of the valley used Spanish names. Of the fourteen who signed the treaty negotiated a few miles to the north, twelve used Spanish names. Fewer Indians used Spanish names in the northern reaches of San Joaquin Valley, none in the Sacramento Valley.<sup>33</sup>

Obviously, not all of these leaders had been alcaldes, but according to Marvin, "A mission Indian usually holds the office of Alcalde in each tribe."<sup>34</sup> Exactly what duties the alcaldes performed in the interior is difficult to determine. Apparently, they differed from group to group.

When discussing the roles and functions of alcaldes in and out of the missions, we are presented with several layers of historical irony. On the one hand, the office of alcalde initially was created by the Spanish civil authorities to prepare Indians for self-government when missions were transformed into pueblos. By selecting only those they intended to manipulate, however, the religious authorities undermined the process. Instead of becoming future leaders of pueblos, many alcaldes became instruments in the perpetuation of the mission system. In this regard, the alcalde must be regarded more as an overseer fulfilling the goals of the colonizers than as a legitimate official representing an Indian constituency. On the other hand, the social restrictions the alcaldes confronted within the missions turned several of them into resistance leaders. The raids they conducted severely damaged the economic foundations upon which the mission system was constructed.

Of greater importance, however, was the fact that the office of alcalde eventually took hold in the interior where it was occupied by individuals who had acquired governing skills while residing at the missions. In this sense, the Spanish actually prepared the Indians for self-government. What transpired, however, was not a paternalistic delegation of local political rights to be exercised within a vast European empire. What emerged was a hybrid governmental structure based on traditional and Spanish elements created by Indians for Indians in a region free of European domination.

## NOTES

1. Daniel Garr, "Planning, Politics and Plunder: The Missions and Indian Pueblos of Hispanic California," *Southern California Quarterly* LIV, (Winter 1972): 291-93.
2. George Harwood Phillips, "Indians and the Breakdown of the Spanish Mission System in California," *Ethnohistory* 21, (Fall 1974) 295.
3. Robert Heizer, ed., *The Indians of Los Angeles County: Hugo Reid's Letters of 1852* (Los Angeles: Southwest Museum, 1968) : 82- 83.
4. Pablo Tac, "Indian Life and Customs at Mission San Luis Rey," edited and translated by Minna and Gordon Hewes, *The Americas* 11, (July 1952) : 100.
5. Zephyrin Englehardt, *Mission San Carlos Borromeo* (Santa Barbara: Mission Santa Barbara, 1934) : 78.
6. Garr, "Planning," pp. 293-94.
7. Quoted *ibid.*, p. 296.
8. Englehardt, *Mission San Carlos*, pp. 81-82.
9. Garr, "Planning," p. 296.
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## COMMENTS

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George Phillips and Mary Young have both provided us with what might be termed a consensus view regarding Indian politics: that native people in the Americas were adaptive when it came to political organization and, for the most part, changed strategies to suit their needs. As they clearly show, these two examples of political adaptation suggest that the eastern people studied by Mary Young were willing to write constitutions when necessary and even include in those bodies of laws, restrictions that sometimes changed the fabric of their societies. To some measure, George Phillips found essentially the same result in California: that a goodly number of the California Indians, characterized by most historians in the past as passive and exploitable, were in fact inclined to use the Spanish fanaticism with legalese as a means to form new political structures that fostered their goals of resistance.

In turning to a discussion of Mary Young's survey of the so-called "civilized tribes," she clearly sees politics as a function of socialization. In other words, on many occasions, as these people modified political institutions they also changed their social structures. Examples of such activity abound in her paper, including the restructuring of clans, property rights and marriage customs when necessary. Such changes were bound to produce discord and factionalism, and such factionalism clearly weakened these tribal groups and made removal easier for the federal government to implement.

Of the five tribes discussed by Young, she is convinced that the Cherokee were the most adaptive and innovative, probably pressured by the large number of mixed-bloods who came to play political roles in their society. The Creeks, on the other hand, are portrayed as being the most conservative of these southern people, upholding the traditional elements of their confederacy as long as possible.

George Phillips is also interested in searching for the causes of political change in his carefully focused account of the California mission Indians. Phillips argues that during the process of missionization, the Franciscan fathers faced increasing pressures to make the natives ready for secularization. Among these pressures was the need to "teach" the Indians political order. This resulted in the selection of various native men to serve in positions of authority in the mission, including that of Alcalde Mayor. As a result, Phillips continues, the basic social structure of the mission Indians changed and a form of hierarchy evolved that while dependent upon the Spanish padres, was in itself a source for power. The Indians who filled these positions of authority worked to implement their charge and oftentimes came in conflict with the Spanish in doing so.

Since many of these Indian men, who were put in positions of authority, were capable leaders, they found their situation to be extremely frustrating. Many fled to the interior where they rose in rank among non-mission Indians and helped lead resistance movements. They used skills of organization learned from the Spanish and their knowledge of geography to aid their new allies in raiding missions. While a considerable amount must still be learned about these men, they apparently were skilled in language and probably demonstrated natural leadership abilities. Those who remained behind, however, were just as likely to

become pawns in the Spanish colonization scheme rather than leaders of a given Indian constituency.

But what does this say about Indian politics? It seems clear from both papers that the actual process of leadership underwent massive change as a result of the pressures of colonization. While we know very little about the process of leadership prior to the invasion of Europeans, certainly the key ingredients were heredity and knowledge. Being an important shaman with knowledge over life and death, or being the descendent of a key leader were still important in leadership selection in the nineteenth century, but as both Young and Phillips have pointed out, the ability to negotiate with whites, to speak either the English or Spanish languages, became a necessary skill. However, neither Young nor Phillips mention religion as an ingredient in leadership, or for that matter, oratory. Increasingly, in the case of the southern tribes, at least, these people were working in a literate world, where rules and regulations were applied to paper and they became at least one new guideline for the society.

Beyond the discussions inherent in each paper relative to politics, there is a second question raised relative to social structure which is intriguing and due to the time restraints that both Young and Phillips were limited by, left dangling. George Phillips seems to suggest at one point in his paper that by creating new roles at the mission, Spanish padres were developing new "social positions." In other words, politics beget social change. Young, on the other hand, says at one point, that Ben Hawkins encouraged changes in clan functions in order to elevate the revenge factor, or that social change was encouraged in order to create more stable political order.

Certainly both authors need to explore these ideas more thoroughly, for I think that they will lead to a more complete discussion of the nature of Indian politics, something that is missing in both papers. Do, for example, political functions really have a major impact on social structure, and if so, in what way. More importantly, neither author has addressed economic institutions. It seems to me that our understanding of both the southern Indians and those of the California missions could be enhanced by a careful reading of some of the new anthropology that is being done on tribal societies of Africa and South America, especially relative to what these scholars call "Modes of Production."

Clearly, as Claude Meillassoux, Emanuel Terray and Pierre-Phillip Rey and others have argued, a gathering society such as that generally found in California at contact, did not have an overly stratified society. Yet social and political structure did exist, as exemplified by such institutions as a stable kinship structure, a means for marriage exchange, based upon reciprocity, a division of labor that evolved around given modes of production and a power structure that controlled these processes. Typically, bridewealth constituted an appropriation of power by elders over their juniors, and the division of labor along sexual or age lines further stratified the society. In other words, despite the fact that the California tribes may have seemed simplistic in terms of structure to outside observers, such an observation was probably biased and wrong. In his paper, Phillips ignores these structures and assumes that the Spanish were imposing political structure on an unorganized people, something that is highly unlikely.

Of course, as Phillips has pointed out, the oppression of the mission was so severe that the inmates were unable to practice much of their old culture. yet to suggest that this institution completely restructured these societies is an argument that runs counter to some of the basic evidence presented in Phillip's

paper: that of the tendency of more than a handful of ex-Alcaldes to flee the mission and turn to leading resistance movements, actions that show in themselves the existence of order. This revelation, fascinating to be sure, certainly suggests that the mission Indians at least retained some of their basic desire for freedom and more so, that the action of running away in itself was an act of resistance characteristic of cultural persistence. Perhaps the situation in California is not all that different from slavery in the Old South. Few scholars today would go so far as to suggest that the repressive nature of that institution destroyed African culture.

Finally, I was greatly intrigued by Phillips suggestion that interior Indian groups became more politically centralized because of their increased connection with ex-mission Indians. Anthropologists and historians have studied similar changes in west Africa, resulting generally from changes in what are usually described as modes of production. In particular they have examined the role of the expanded network of the slave trade and concluded that it both changed social and political structure. Phillips seems to imply that these changes came as a result of militarism, and that they were attended by what amounted to increased raiding of missions and haciendas. Despite my lack of knowledge with these sources, it seems likely that the increased raiding, and its economic implications, might be as much a reason for political change as the examples provided by the Spanish.

The political change that Mary Young found in the south seems even more dramatic. But while Young's analysis documents the change, it is less exact in determining why it occurs and how it occurs. I suspect that most 19th century societies with mixed agricultural and hunting and gathering economies had very well entrenched power structures that were not easily changed. Whether matrilineal or patrilineal, they were undoubtedly based on the creation of a hierarchy which in most cases led to the establishment of a council which made law. The Cherokee and Creeks both had such systems, clan-based in terms of lineage, and oriented around a dual functional structure with one group concerning itself with civil matters and the other, external affairs.

The council itself was made up of elders, who formed an alliance in the community and preserved their control by working together. Such a system has been called by some anthropologists, a lineage mode of production, in that it is based on a segmentation of society, or kinship groups. While each elder must satisfy a respective constituency which includes men much younger and vigorous than himself as well as women and children, such political leaders were not able to do this by physical coercion or by control of the means of production. They did so by knowledge of genealogy, history, magic, religion, cultural rites, agriculture and hunting. In exchange for this knowledge--the kind of knowledge that allowed the society to survive--they demanded and got respect, oftentimes some say over the distribution of women, and finally the power to instruct the young in their responsibilities. Despite the fact that hunting often resulted in the young men going far from the village, and was a mode of production that might easily damage such a structure, it did not since village life formed the social structure and was the dominant influence in developing both political and social systems.

But what Mary Young has so convincingly shown in her paper is that this shelter for political order was indeed falling apart. It would seem to me that the factionalism that is obvious by the late eighteenth and early nineteenth centuries in the south was from the start at least the result of the disruption of a lineage system that had existed in the village and had held the society

together. All one has to do is look closely at agriculture to see how change influenced the basic fabric of the society. As southern Indians saw game herds disappear, they turned increasingly to farming as a means to feed their families. But they also received new tools from the federal government to conduct this enterprise and they adopted new crops such as cotton, which necessitated activity in a new market economy. Given such change, should it seem a surprise that the Creeks turned to a Ben Hawkins, who became their "beloved man", when as Young has pointed out "Hawkins established a model plantation, self-sufficient by virtue of its mills, smithies, and other handicraft shops." What could elders do to demonstrate their worth when it came to such competition? Furthermore, Hawkins' creation of a police force may have brought more order to Creek society, but it also disrupted traditional political institutions.

Finally, what about the mixed-bloods. With respect to the Cherokee, at least, they seem to play an obviously important role in political development. What question needs to be answered, though, I think, is why do they become so important? We know that they operate successfully in two different cultures, and that in the case of the Cherokee, came to play a major role in nineteenth century affairs. But how did they do this, by emphasizing traditional roles or by forging new ones that were based on a new concept of political power? Do they show respect for age, or do they scorn such ideas? Were they important simply because they had access to the white power structure, could often speak English and work as brokers, or was it perhaps because they simply had better answers for the problems facing these people?

To conclude, then, we have certainly come a long way in a few short decades in our understanding of not only what happened to the American Indians but how and why it happened. Both of the papers read here today demonstrate much of this new Indian history. In terms of the political development of native people, we are now analyzing changes that a few years ago were simply not contemplated, such as the notion that "factions" existed in tribal societies. It is my hope that the next step will be to better integrate our understanding of politics with our expanding knowledge of social and economic systems. Only at that point will we finally realize our ultimate goal of an objective history of the native peoples of this land.

## CROW LEADERSHIP AMIDST RESERVATION OPPRESSION

FREDERICK E. HOXIE  
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During the last ten years scholars have become aware of a truth long apparent--if only dimly acknowledged--within American Indian communities in the United States. The truth is that a century ago Indian reservations were both oppressive and unsuccessful instruments of imperial control. During the years between 1870 to 1930 the United States, what one Indian poet has recently called, "this viper nation,"<sup>1</sup> consolidated its control over the aboriginal inhabitants who live in the West. Initially, this control took the form of direct federal governance of relatively small units. Agents, supported by regular army units, implemented policies formulated in Washington, D.C. Officials forced the indigenous populations under their authority to attend school, to stop practicing traditional religious rituals, to marry and divorce like white men, and to participate in a cash economy.

At least for the Plains region, it is not an overstatement to call reservation life in this period oppressive. Nor is it an exaggeration to declare that allotment--which broke most western reservations into individual landholdings--only altered the form of government oppression. After native people had received individual titles to real estate in areas that previously had been occupied communally, federal agents continued to incarcerate Indian people without trial and to enforce their orders with military power. Schoolmasters continued to separate children from their parents. Federal authorities continued to break up unauthorized religious activities and destroy sacred objects. And all of these officials could still "withhold rations" from (i.e. starve) their charges.

Allotment laws did not reduce federal power over Indians. The Supreme Court spoke for the bureaucracy in 1910 when it declared that "Congress, in pursuance of the long-established policy of the Government, has the right to determine for itself when the guardianship which has been maintained over the Indian shall cease. It is for that body, and not for the courts, to determine when the true interests of the Indian require his release from such condition."<sup>2</sup>

In 1908, Z. Lewis Dalby, an attorney conducting an investigation of the Montana Crow reservation for the Bureau of Indian Affairs, put this proposition in practical language. Speaking to Plenty Coos, one of the Crow tribe's most influential chiefs, Dalby warned, "your position here as chief is not an official or necessary position. You have such influence as the Department of the Interior is willing that you should exercise. If the Department of the Interior finds that you are exercising that influence to the detriment of the Crow Indians, then your influence will be taken away from you." The fact that Plenty Coos occupied a two-story frame house, operated a store, and farmed a productive allotment did not affect Dalby's attitude toward him.<sup>3</sup>

In 1930, an outside observer, hovering over the American West in an imaginary helicopter would have to conclude that the oppression of the early reservation era had succeeded in destroying the political power of nineteenth century tribes. By 1930 Indian communities were reduced to poverty and confined to the margins of state and national politics. Federal officials and state politicians could act as if Indians no longer existed. From the perspective of these outsiders, autonomous native communities had become extinct despite

the fact that in the same period aggregate Indian population in North America began to rise for the first time since 1492.

But if one were on the ground rather than in a helicopter in 1930, the Indian world would have looked very different. From the perspective of local native communities the reservation system was a failure. While outsiders succeeded in altering Indian dress, economic life and religious practices, the oppressive reservation regimes did not succeed in accomplishing their principal objective of "dissolving the bonds of tribalism." In 1930 most residents of areas whose majority traced their descent from aboriginal populations continued to think of themselves as members of a distinctive group. As distinct social entities, these enclaves continued to recognize their own ethnic leaders and to pursue a tribal agenda. This fact immediately raises several historical questions: How did Indian communities survive the onslaught of those years? What did that survival mean? And, from the point of view of political life, what was the relationship between community survival and tribal politics?

Answering these questions also propels us into the wider arena of American social and political history. Since the reservation era coincided with the peak of Europe and Asian immigration into the United States as well as the rise of Jim Crow laws and white supremacy as legitimate features of national life, comparisons with other groups are also appropriate. Moreover the early twentieth century is generally recognized as the period when cultural pluralism emerged as an idea and a political reality in the United States. In what ways did Indian communities participate in that process. One scholar has declared that, "minority races were politically impotent and socially invisible during much of the time when American pluralism was taking shape--and the shape it took was not determined by their presence or by their repression." Is he right?<sup>4</sup>

Our task, therefore, has many goals: to explain changes in Indian political life, to compare those changes to the experience of other groups in the United States, and to explore the relationship--if any--between these changes and the emergence of American pluralism. How should we proceed?

Let me explain first why we should reject the answer most frequently given to explain Indian cultural and political survival. That answer is resistance, the tribes' (and their leaders') dogged determination to preserve the old ways. Historians frequently paint this resistance in biographical terms. A few good people--usually men--kept the old ways alive despite the efforts of mean-spirited agents and frontier entrepreneurs. Holding off these non-Indian invaders were leaders who often appear as western versions of the aging Kentucky colonel. Defeated but proud, they posed for photographs in their old uniforms, saved their equivalent of confederate money and waited for the West to rise again.

William T. Hagan's history of the Comanches in the reservation era asserts that Quanah Parker's "frustrations and triumphs" as a defender of his people "was that of the average Comanche writ large."<sup>5</sup> Similarly, Donald Berthrong asserts that the survival of the Southern Cheyennes during the same period "is a singular testament to their inner strength and a way of life based upon time-honored customs and spiritualism."<sup>6</sup> Arrell Gibson places this impressionistic and individualistic approach in a broader context in his textbook, American Indian: Prehistory to the Present. There he asserted that while many Indians were "desolated" by reservation life, they "refused to submit to the new order passively." This resistance took the form of a "near zealous commitment to old customs," as well as eager participation in religious revivals such as the Ghost Dance and Native American Church.<sup>7</sup>

Without denying the significance of Quanah's leadership or the power of Cheyenne values, and recognizing the innovations of the Ghost Dance and other movements, none of these phenomena in themselves can explain the persistence of native communities as social and political entities. There are three reasons for this.

First, "resistance" cannot account for the survival of native communities which contained a variety of interest groups which took a variety of positions on public issues. Despite the deep divisions which existed among people on reservations, most community members continued to think of themselves as members of the same cultural group. There were more than two sides to most questions, and no single side coincided with the cause of resistance or the survival of tribal culture. In the Crow community of Pryor, for example, Plenty Coos, the Crow "chief" threatened with firing by Inspector Dalby, wrote to the Commissioner of Indian Affairs in 1927, urging him to ban the use of peyote on the reservation because it was corrupting the tribe's young people.<sup>8</sup> Neither the Pryor chief nor the tribe's peyotists had a monopoly on Crow values, and both he and his opponents were veteran resisters of federal authority. Accounting for community survival by praising one group as the defenders of traditional values flattens history and distorts the complexity of reservation life.

Second, survival through resistance does not explain how people survived the period of reservation oppression yet changed dramatically between 1870 and 1930. Many adopted Christianity or became players in the modern economy, others attended public school, cut their hair and became Republicans. Painting a picture with only two colors--one for surrender and the other for resistance--leaves us with a severely constricted vision of social change within the reservation world.

Finally, focusing on the Indians' resistance to the "new order" of the reservation gives white people too much credit. While agents held oppressive power, they were also inefficient, isolated and often broke. They could withhold rations and put people in the guardhouse, but they could not monitor daily behavior very effectively nor could they prevent their charges from complaining to the press, mobilizing their allies back East, or--worse--ignoring them.

The district farmer for the Big Horn valley on the Crow reservation, for example, was charged with supervising Indian agriculture. He was to report weekly to Crow Agency regarding the progress of his charges. Disobedience could jeopardize future federal assistance. And yet the Big Horn district farmer reported in August of 1925 that "Quite a number of the Indians of this district are still up in the mountains. Some of them have been there for nearly a month now. And of those who are in the valley, a large percentage of them have been camping around the dipping vat nearly all week."<sup>9</sup>

It is more effective to tell the story of tribal survival during the reservation era in terms of the interaction between a native political system and a new political environment. Through time, the native system--complete with rivalries and inefficiencies--was forcibly incorporated into the alien political environment of the United States. Their new reservation homeland had sharp geographic boundaries, limited economic resources, and unfamiliar institutions. This setting imposed restraints on some forms of political behavior while allowing others to flourish. By 1930 the interplay between native political ideas and this new environment had altered tribal politics. The result was something new: an American Indian polity which existed within boundaries established by others. Naturally, this new polity encompassed new kinds of

political behavior and produced new sorts of leaders. It also served a new set of political objectives. In this sense it was fundamentally different from the polity which had existed in the nineteenth century.

The assertion that tribal politics in the 1920s was fundamentally different from tribal politics in the 1870s is one of the central features of my argument, so it should not be presented in generic form. I turn, therefore, to a single tribe--the Crows of Montana--to indicate how the reservation era fundamentally altered political life within that community.

Four events marked the emergence of the new Indian polity on the Crow reservation. They are the 1887 Sword Bearer "uprising," the negotiation of the last major land cession agreement in 1899, the Helen Grey affair of 1906-7, and the recognition of the Crow general council in the mid-1920s.

At five o'clock on the evening of September 30, 1887, as Crow Reservation Superintendent Henry Williamson and his wife sat on the front porch of their quarters near the banks of the Little Big Horn River, a group of sixteen young men, painted and dressed for battle, rode into view. Beginning at one end of the horseshoe-shaped agency compound, they began firing their pistols at the roofs of all the government buildings and into the air. When they reached the agency office their leader, a twenty-two year old youth called Sword Bearer, thrust his gun in the belly of the superintendent's interpreter and then fired wildly into space. In a few minutes they were before the agent's home where they shot at his chimney and roof before riding off into the twilight. Throughout the "attack" agent Williamson sat frozen and slack-jawed, his unopened mail in his lap.<sup>10</sup>

These few minutes of harmless gunfire represent the most direct challenge to federal authority in Crow history. The death of Sword Bearer and seven of his followers in a showdown with the U.S. Army on November 5 marked not only the end of the "uprising," but the end of that challenge. In the month that separated Sword Bearer's "attack" and his death, the government issued several pleas to Crow elders to arrest the young warriors and restore order on the reservation. The last of these requests took place on the morning of November 5 itself; the "chiefs" failure to comply pushed the military to launch its final offensive.

The Crow leaders' inability to act--either in defense of Sword Bearer or in opposition to him--indicated their unwillingness to choose between a struggle for independence (and sure defeat) or surrender. Their acquiescence in his death at the hands of the soldiers marked the beginning of an era in which leaders were required to recognize publicly the final authority of the United States government. Following November 5, tribal autonomy no longer could mean complete freedom from federal authority; the event marked the beginning of the incorporation of Crow tribal politics into the political system of the United States.

Scholars have generally understood Sword Bearer's flamboyant attack as the action of a frustrated warrior, the thwarted start of a religious revival movement, or the product generational tensions between remote leaders and unhappy young people.<sup>11</sup> While all of these are plausible, the symbolic quality of the incident--a young man flaunting the authority of the government--suggests a more sophisticated political agenda. This agenda comes more sharply into focus when one considers the political context of the event.

Like other equestrian hunters on the Plains, the Crows were a fluid band-level society. Their clans and societies inspired unity in times of stress, but typically they hunted and camped in bands which owed their allegiance to one of

three major divisions: the River Crows, Mountain Crows and Kicked in the Bellies. Within the bands, authority was in the hands of elders and priests; their orders were enforced by soldier societies whose membership was drawn from the group's young men. While one's clan membership and tribal division was fixed at birth, membership in a soldier society and a band was voluntary and of variable length. Because of this fluidity, it is impossible to speak of a single tribal government or principal chief prior to the enforced confinement of the reservation era.<sup>12</sup>

The Crows signed their first formal agreement with the United States in 1825 when a Mountain Crow band leader named Long Hair came to the Hidatsa villages on the Missouri River to sign a treaty of friendship offered by General Henry Atkinson. Significantly, however, Long Hair signed the agreement while a River Crow band leader, Rotten (or Sore) Belly refused to appear, and still others were ignorant of the meeting.

While the Crows' first treaty was signed in 1825, it was not until 1851 that the tribe's leaders agreed to define the boundaries of their homeland and accept payments from the United States. In 1868 Crow leaders again agreed to a treaty. The later agreement sharply reduced the 1851 boundaries and provided for the construction of schools and agencies.

Despite a record of having negotiated a series of agreements with the United States, there was little intrusion of federal power into Crow life prior to the 1880s. The tribe had no resident agent until 1869, and their agency was largely inaccessible until the late 1870s. Most significant, the principal Crow bands spurned the agency for most of the year, travelling regularly beyond the boundaries set by their treaties. They moved between winter camps near the headwaters of the Yellowstone (the location of the first Crow agency), hunting expeditions on the prairies of eastern Montana, and gatherings for berry picking and hunting in the Big Horn mountains and along the Shoshone river in northern Wyoming.

Portions of the River Crow division of the tribe preferred the upper Missouri and would rarely come to the agency. Others, primarily Mountain Crows, often spent the winter near the agency, but early government officials reported that they felt they maintained an outpost without Indians. Agent Armstrong wrote in 1882, for example, that "these Indians have never been governed but allowed to do pretty much as they pleased...."<sup>13</sup>

During the early 1880s, the federal presence became evident in the daily life of the tribe because game grew scarce (buffalo were virtually extinct by 1883), complaints of Indian trespassing began to come in from farmers and ranchers in northern Wyoming and eastern Montana, and the Northern Pacific railroad began lobbying for a right of way along the southern bank of the Yellowstone. At the same time, the Indian Office began to plan for the allotment of the reservation. A group of 107 "chiefs"--leaders of the Crow bands--signed a right of way agreement with the Northern Pacific in the summer of 1881. While the right of way provoked a great deal of debate, there was little protest once the negotiations had been completed. Immediately afterward, however, as the agent began to funnel federal dollars to leaders who agreed to farm and to pressure the entire group to relocate onto the allotted flatlands east of Billings, differences arose. It is these differences which underlay the Sword Bearer incident.

Between 1882 and 1887 three groups emerged within the Crow community. First was a group of men in their 50s and 60s who stood aloof from the agent's ambitious plans, but who favored cooperation with the United States. Many of

them, like Iron Bull and Thin Belly were former army scouts who had cast their lot with the cavalry during the Sioux wars. (Iron Bull, often referred to as "principal chief" participated in driving home the last spike in the Northern Pacific Railroad when it was completed in 1883.) Second was a group of younger men who were willing to accept the agent's orders in exchange for favors from the government. Among these middle men were Plenty Coos, Pretty Eagle and Medicine Crow, three leaders in their late 30s who spent a substantial amount of time at the agency and who voluntarily began to cut hay and move onto allotments.

Third was a group of family and band leaders who resented the agent's plans and who urged younger men to oppose him. Agent Armstrong wrote at the end of 1882 that, "there is a disposition shown by some of the young men to pull away from the older chiefs who have made themselves unpopular by working on the (agency) farm. These young men want to form new bands which they call prairie bands composed entirely of Indians who oppose all civilizing influences."<sup>14</sup>

Several band leaders encouraged this tendency, among them Crazy Head, Deaf Bull, Spotted Horse and Bear Wolf. In 1883 Crazy Head left the reservation without permission and was pursued by a detachment of soldiers nearly to North Dakota before he agreed to return. Early in 1885 Spotted Horse and Bear Wolf were confined to Fort Custer following an incident in which Agent Armstrong was threatened and assaulted.<sup>15</sup> Following their imprisonment, one of their supporters--Deaf Bull--(described by the agent as a member of Pretty Eagle's band) warned that his friends were determined to seek revenge if they were set free. Agent Armstrong urged that Spotted Horse and Bear Wolf be transferred to a prison in the East, predicting that "if these Indians should be released ... their influence will be stronger than it has been; their party will undoubtedly grow and increase and may cause the government much trouble."<sup>16</sup>

The opposition of men like Spotted Horse appeared to threaten the peace of Crow agency in 1886 when suddenly, Sitting Bull and fifty Sioux arrived on the Little Big Horn for a "visit." While there Sitting Bull asked to for a meeting with Agent Williamson. "During the talk," Williamson reported, "several of the Crow chiefs--who had never before uttered one word against the allotments, but had ... acted and spoken in favor thereof--came forward and took the same stand that Sitting Bull said he had taken at his agency. Among the Crows speaking after this manner was "Spotted Horse" who stated that 'this country was his, and he would put the Crows on places where he wished them to live."<sup>17</sup> While such over opposition died down once Sitting Bull left the reservation, the opposition of Spotted Horse, Crazy Head and their shadowy "prairie bands" operating beyond the agent's control were a regular source of instability within the Crow community.<sup>18</sup>

When Sword Bearer rode into Crow Agency one of his companions was Crazy Head's son, Knows His Coups, and his fiercest defenders within the tribe were Deaf Bull and Crazy Head. Deaf Bull traveled with Sword Bearer to the Northern Cheyenne reservation in an attempt to rally support following the September 30 shootings, and Crazy Head urged his son and the other young men to resist the soldiers. Deaf Bull and Crazy Head were imprisoned with the rebels following the army's victory on November 5, effectively removing them--and their "party"--from tribal politics.<sup>19</sup>

Significantly, the 35 day interval between the September 30 shootings at the agency and the November 5 show-down with federal troops was marked by silence from Plenty Coos and other middle men. General Ruger repeatedly asked Crow leaders to turn Sword Bearer over to them, but no one would act. Five of

the 21 men who participated in the September 30 incident were enrolled as members of Plenty Coos band; two were with Medicine Crow. Rumors circulated that Pretty Eagle, and perhaps even Plenty Coos, might join the rebellion, but clearly the chiefs chose cautious neutrality. The result of this tactic is epitomized by a note General Ruger scribbled three days after Sword Bearer's death and preserved today with Plenty Coos' papers: "This is to certify that Chief Plenty Coos is an intelligent Indian and worthy of trust and confidence."<sup>20</sup>

By 1899 Pretty Eagle, Plenty Coos and other band leaders were settled into four districts on the reservation. They formed a kind of presidium which met with the agent to discuss grazing leases and right of way agreements, gathered people together to approve decisions, and distributed agency patronage. Speaking at a council with the government's agent in 1889, for example, Plenty Coos indicated that he expected to dispense jobs at the agency. He noted that he had urged his followers to send their children to school. "Then," he observed, "when they come back they can work in the issue room, can talk Indian and English." The same was true for the agency police force. "The police are now all discharged and I am going to make some more," the forty-year-old chief declared. "If you (to the agent) say twenty, thirty, or forty policemen you want, I make them. I will pick out all brave good men; what I say is true."<sup>21</sup>

The highpoint of this arrangement was the sale of a tract of 1.1 million acres of reservation land to the U.S. government in the summer of 1899. Pretty Eagle and Plenty Coos were the principal spokespersons for the tribe in the negotiations. They agreed to the sale even though it would likely displace the River Crows who had recently settled on the tract which lay north of the new agency, at lower end of the Big Horn River. (The modern town of Hardin sits on this land.)

Significantly, both Plenty Coos and Pretty Eagle indicated in their formal speeches to the commissioners that younger people who had been away at school would also speak at the treaty session. Pretty Eagle concluded his opening address this way: "I have said all that I care to say at this time; my young men will read a paper to you that will tell the things that I have been thinking of." Immediately, Carl Lieder, the thirty-year old son of a Crow woman and a white man, rose and declared, "this is the first time in the history of the Crows we younger men have been allowed a voice in the Crow council." He then went on to list former promises that had not been kept and annuity payments that had not been made. As soon as he ended, Spotted Horse, whom Agent Armstrong had imprisoned in 1885, rose to declare that "we want a settlement of those back accounts; we must have those back monies paid to us before we will talk any more about that land."<sup>22</sup>

The government negotiators in 1899 met a formidable political machine. The group's leaders had decided ahead of time who would speak, and no one other than the designated leaders--Pretty Eagle, Plenty Coos, Leider and Spotted Horse appear on the transcript of the session. How formidable this machine was becomes even more apparent when one examines who signed the final land sale agreement.

Even though 518 adult male Crows put their mark of approval on the accord, there are 162 men listed as heads of households in the 1900 census who did not. Of these, I have been able to identify 119 individuals who were "adult males" in 1899 and who selected allotments on the reservation in the first decade of the twentieth century. Of these, 72 (or about 60%) selected allotments

in the areas closest to the 1899 land sale. It would seem that the people who lived close to or on the area being sold either opposed the sale or stayed away from the negotiations. In other words, not only were Plenty Coos, Two Leggings, Medicine Crow and the other younger men speaking for a group the government now equated with "the tribe," but they seem to have been successful in orchestrating a coalition of followers who would back them.

The 1899 land sale indicates that Plenty Coos and the other recognized leaders had negotiated a transaction which satisfied the government's demand that they sell some of their lands, but which did not endanger their own settlements at the south end of the reserve.<sup>23</sup> The efficiency of the sale might also have contributed to the tribal divisions which became apparent a decade later.

The third crucial event in the political evolution of the Crow reservation community began with the arrival of a white woman from the East at Crow Agency in the fall of 1906. Helen Pierce Grey was a muckraker. She spent the winter of 1906-7 among the Crows, collecting complaints against Superintendent Samuel Reynolds and the tribal leadership. These included favoritism in agency hiring and dissatisfaction over a series of grazing leases with local white ranchers. Significantly, Grey's chief informants were younger men, many of whom were graduates of government boarding schools.

By the spring of 1907, dissatisfied Crows had organized the Crow Indian Lodge, an organization with chapters in the Lodge Grass, Pryor and Big Horn districts. The group was led primarily by men in their twenties and thirties, and while its complaints were aimed at Agent Reynolds, it didn't take much imagination to realize that they were fed up with the "presidium" arrangement that had been so evident since 1899. They criticized the agents, but Plenty Coos must have known who their next target would be.

In May, 1907, the Indian Office dispatched Z. Lewis Dalby, a Washington attorney, to investigate Helen Grey's charges. Interestingly, when Dalby arrived Agent Reynolds discovered that Plenty Coos was suddenly very difficult to reach. Reports began to circulate that the 58 year-old leader was meeting with the Crow Indian Lodge. After Dalby held a series of rancorous meetings with the Crow Indian Lodge and its sympathizers, it became clear that his report would exonerate Superintendent Reynolds. Sensing this shift in atmosphere, Plenty Coos--who earlier had met openly with the Crow Indian Lodge--now backed off. But he did not intend to retire from the field.

The Indian Office offered the tribe a perfect vehicle for reunification in early 1908 when James McLaughlin appeared at Crow Agency to negotiate yet another large land sale. Plenty Coos quickly rallied his followers and produced a solid wall of tribal opposition to the scheme. Even Big Medicine, the agency chief of police and Reynolds' most reliable supporter, declared that "we need our land to share and share alike in the making of allotments."<sup>24</sup> But Plenty Coos' reassertion of leadership did not return the community's political system to the status quo. Tribal leaders must have been surprised by the depth of the discontent unleashed by Grey's visit, for they set out to construct a means for encompassing and managing dissent in the years to come. The principal means of accomplishing this was a tribal business committee which was created in 1910 and on which many former members of the Crow Indian Lodge sat. One of its most energetic leaders was James Carpenter, a mixed blood former schoolboy who had been born in 1881 and who was one of Helen Grey's hosts when she first came to the reservation.

Time allows only a sketch of this story, but its consequences for tribal politics seem clear. Plenty Coos and others (and here I would include Bell Rock, Spotted Rabbit and Medicine Crow) had risen to leadership by serving as mediators between the power of the government and the desires of their followers. In this process they ran a risk of losing their influence by appearing to be puppets, corrupt instruments of the agent's policies. The "scandal" of 1907 exposed their alliance with both the agent and local nonIndian ranchers so they switched their allegiance back to the protestors--who in this case were young people angry at being excluded from patronage and economic benefits. Once the older leaders had proven their loyalty to their constituents, and after they realized the protests would not unseat the agent, they were able to reassert themselves. Opposition to additional land sales was the perfect issue on which to base this political comeback.

Plenty Coos' zig-zag course through the Helen Grey affair traced a reservation equivalent of the Republican Party's bloody shirt of the 1870s, or the Southern Democrats' appeal to racial unity amidst the populist revolt of the 1890s. His was an appeal to cultural loyalty which overrode the community's class and ideological divisions. The differences between incidents in the Indian and non-Indian worlds were enormous, but the dynamic was the same: an embattled political leadership asserted a cultural theme (in this case tribal unity in defense of a common homeland) in the face of a threat to its authority. The results too were similar: a hardening of political and cultural identity and a consolidation of power (even if some of it now had to be shared).

By 1920, the tribal business committee was operating as a forum for tribal complaints and a vehicle for negotiating leases and other agreements with outsiders. It had also become an instrument for airing internal disputes and galvanizing community support for larger causes such as hiring an attorney to file lawsuits before the U.S. Court of Claims or opposing continued attempts to acquire tribal land. Nevertheless, this arrangement could not prevent a final event in the development of a tribal political system: the emergence in the middle 1920s of a general council form of government in which the entire tribe assembled to make important decisions.

It was the success of the tribal business committee that had the most to do with its downfall. The committee succeeded in defending the Crows' interests in Washington and in curbing the autocratic tendencies of their agents. It had also succeeded in securing passage of the 1920 Crow Act which divided unallotted land among all Crows rather than simply opening these properties to nonIndian settlement. The result of these efforts had been an economic boom for the tribe. As a result, the committee's work attracted a great deal of attention.<sup>25</sup> During the latter 1920s, as tribal income from leasing, land sales and oil exploration dropped and per capita income declined, council meetings became a focus for the community's anxieties. Leaders rose to prominence by promising court settlements or development schemes, and their supporters happily packed into the meeting rooms.

What had emerged by 1930 was a form of Crow politics that was adapted to the reservation environment. It operated within the fixed boundaries of the reservation and it did not directly challenge the authority of the United States. The objective of political struggle was to form politically active majorities within the Crow community and to win recognition of those majorities as the decisive voice of "the Crow tribe." The agendas of the political interest groups reflected a mix of local concerns, personal rivalries and cultural appeals.

Crow politics in the 1930s also reflected a new definition of tribal autonomy. In the nineteenth century, tribal leaders had sought complete independence from outside control. Individuals like Crazy Head and Deaf Bull had hoped to remain outside of federal authority, while others like Plenty Coos and Medicine Crow tried to cooperate with the government in an effort to minimize intrusion. Whatever their tactic, however, the "chiefs" of the 1880s wanted to maintain a community separate and apart from the white world. By 1930 it was clear that this older version of autonomy was impossible to achieve. In its place, tribal leaders sought to preserve a political life that operated within limits but which was free from outside interference. Autonomy had come to mean a community existence obedient to, but unrestrained by, externally imposed rules and regulations. In short, the Crows now wanted to preserve the institutions and practices they had developed during the era of reservation oppression.

In 1935 the Crows demonstrated their allegiance to their new political system when they refused to accept the Indian Reorganization Act. Commissioner John Collier's scheme to "liberate" the tribes from the oppression of the past had no appeal for the Crows. In a special message circulated on the Crow reservation, Collier predicted that tribes which rejected the new law would "drift to the rear of the great advance open to the Indian race."<sup>26</sup> Nevertheless, at a special election held on May 18, 1935, 86% of the ballots were cast in opposition to the new law.

Writing to Collier a few weeks after the May vote, Crow Agency Superintendent Robert Yellowtail--himself a tribal leader who had risen to prominence as an activist on the Business Committee in the 1920s--declared that while he was "most sorry that the Crows rejected the act," the tribe would simply not accept changes imposed on them from the outside:

I now feel, after having gone over the field at some expense and in asking the various tribes: 'why did you reject this bill when it offered you everything that you had lost, everything to gain and nothing to lose?' I invariably find that the old hostile feeling against the Indian Bureau, ... is apparently the predominating motive.<sup>27</sup>

In the sixty years preceding their vote on the Indian Reorganization Act, the Crow people had reshaped their political life, redefined their community identity, and redefined the meaning of political autonomy. When asked to abandon the edifice they had created, they could do nothing but say "no."

## NOTES

1. Adrian C. Louis, Fire Water World (Albuquerque: West End Press, 1989), p.1.
2. Tiger v. Western Investment Co., 221 U.S. 315. This phrase was quoted with approval three years later in a landmark case which extended federal power over the Pueblos of the Rio Grande valley despite the fact that these communities held their lands in fee simple and were United States citizens. See U.S. v. Sandoval, 231 U.S. 46.
3. Z. Lewis Dalby testimony in "Hearings Before the Committee on Indian Affairs, U.S. Senate, on S.2087 and S.2693," Senate Document 445, 60 Congress, 1 Session, 1908, p.412-413.
4. Michael Walzer, "Pluralism in Political Perspective," in the Harvard Encyclopedia of American Ethnic Groups (Cambridge: Harvard University Press, 1980), reprinted in The Politics of Ethnicity (Cambridge: Belknap Press, 1982), p. 6.
5. William T. Hagan, U.S.-Comanche Relations: The Reservation Years (New Haven: Yale University Press, 1976), p. 289.
6. Donald J. Berthrong, "Legacies of the Dawes Act: Bureaucrats and Land Thieves at the Cheyenne-Arapaho Agencies of Oklahoma," in Peter Iverson, ed., The Plains Indians in the Twentieth Century (Norman: University of Oklahoma Press, 1985), p.49. Berthrong's essay originally appeared in Arizona and the West (Winter, 1979), p.335-354.
7. Arrell Morgan Gibson, The American Indian: Prehistory to the Present (Lexington, Mass: D.C. Heath, 1980), p.464.
8. Plenty Coos to Commissioner of Indian Affairs, Feb. 11, 1927, Item 15, file 122-2, Box 79, Crow Agency Records, Federal Records Center, Seattle, Washington. (Hereafter cited as CAR,FRC, Seattle.)
9. Farmer's Weekly Report, Big Horn District, Crow Reservation, August 3 to 8, 1925, Item 15, File 139, Box 87, RCA,FRC, Seattle.
10. For an excellent description of the entire Sword Bearer affair, see Colin Calloway, "Sword Bearer and the 'Crow Outbreak,' 1887," Montana The Magazine of Western History (Autumn, 1986), p. 38-51.
11. See Calloway, "Sword Bearer and the 'Crow Outbreak,' 1887, pp.50-51, for a summary of these positions.
12. My thinking along these lines is heavily influenced by Morton Fried and Elizabeth Colson. See, Elizabeth Colson, "Political Organization in Tribal Societies: A Cross-Cultural Comparison," American Indian Quarterly, Vol. X, No.1 (Winter, 1986), p.5-19.

13. Armstrong to Commissioner of Indian Affairs (hereafter CIA), December 6, 1882, Item 3, Box 9, RCA, FRC, Seattle.

14. Henry Armstrong to Commissioner of Indian Affairs, December 6, 1882, Item 3, Box 9, RCA, FRC, Seattle.

15. For the 1883 incident, see Arden Smith to CIA, February 13, 1883, Letters received, Box 59, letter 2545, Records Group 75, National Archives, Washington, D.C. For the arrest of Spotted Horse and Bear Wolf, see Armstrong to CIA, January 22, 1885 and February 26, 1885, Item 3, Box 10, RCA, FRC, Seattle.

Spotted Horse may also have had an old grudge against Plenty Coos for his involvement in the accidental death of his sister in the early 1870s. The woman picked up a pistol that Plenty Coos had laid near her fire place; it went off and killed her. According to James Carpenter, Lowie's principal Crow informant, Spotted Horse was prevented to exacting revenge against Plenty Coos because "he was his brother in law at the time." See James Carpenter to Robert Lowie, December 2, 1933, Incoming Correspondence, Robert H. Lowie Papers, University of California, Berkeley.

The arrest of Spotted Horse and Crazy Head may also have been connected to their refusal to sign a treaty agreement in January of 1885. See H.J. Armstrong to CIA, January 13, 1885, Letters Received, Crow Agency, file 1249, Records Group 75, National Archives.

Interestingly, the army did not believe Spotted Horse and Crazy Head deserved incarceration. See Secretary of War to Secretary of the Interior, February 28, 1885, Letters Received, Crow Agency, file 4499, Records Group 75, National Archives.

16. Armstrong to CIA, February 26, 1885, p.3.

17. Henry Williamson to CIA, September 27, 1886, Letters Received, Crow Agency, file 26353, Records Group 75, National Archives. See also the report of the resident allotting agents, J.G. Walker and James R. Howard in their letter of the same date to the CIA. See Letters Received, Crow Agency, file 26352, Records Group 75, National Archives. Among other things, Walker and Howard reported that Sitting Bull "has convinced the Crow chiefs that their influence with their people will be destroyed and lost in proportion as their people learn to look to their agent for guidance and control instead of to them. These chiefs were not astute enough to discover this fact until it was shown them by the wily Sioux. From his standpoint he is quite right, but from the civilized point of view, and in the true interest of the Indians, this is a result to be most desired, for it is certain that until this is accomplished, no material improvement of the Indians can be expected. The individual Indian must learn to look to the agent for guidance and control and not to their chief, who is naturally a thorough conservative and opposed to innovation."

18. During the month of October, 1887, when Sword Bearer was at large in hills near Crow Agency, a band of ten Sioux warriors were intercepted enroute to the Little Big Horn. The arrest set off fears of an intertribal outbreak.

See Henry Williamson to CIA, October 12, 1887, Letters Received, Crow Agency, file 27077, Records Group 75, National Archives.

19. See Thomas H. Ruger to Assistant Adjutant General, November 30, 1887, Letters Received, Records Group 75, file 33393, 1887, National Archives, Washington, D.C.

20. General Thomas H. Ruger to whom it may concern, November 8, 1887, Plenty Coos Papers, Montana Historical Society.

21. Proceedings of a Council, June 30, 1889, filed as Special Case 133, folder 21265, Records Group 75, National Archives, Washington, D.C.

22. The council proceedings are filed as letter 45587-1899, Letters Received, Crow Agency, Records Group 75, National Archives.

23. My compilations are based on the manuscript census returns for the 1900 federal census, the land sale agreement itself (filed as folder 45587-1899, Letters Received, Crow Agency, Records Group 75, National Archives), and the "List of Crow Allotments," Item 2, Box 2, RCA,FRC, Seattle. The districts from which non-signers came were Pryor (22), Black Lodge (36), Big Horn (22), Crow Agency (14) and Lodge Grass (25). District boundaries are unclear, however, and I plan to map the allotment locations. If anything, that will make the case more convincing. The 1900 census lists 582 male heads of household of whom 420 appear on the 1899 document.

24. For a full description of this incident see Frederick E. Hoxie, "Building A Future On The Past: Crow Indian Leadership in an Era of Division and Reunion," in Walter L. Williams, ed., Indian Leadership, (Manhattan, KS: Sunflower University Press, 1984). Big Medicine's statement is on page 82.

25. One agent wrote, "it has been difficult to prevent the (business) committee meetings from merging into a general council in which everybody takes part, and the actions of the voluntary council rather than of the business committee approved." Superintendent' Annual Narrative and Statistical Report, 1921,p.14-15.

26. John Collier, "Facts About the New Indian Reorganization Act," p. 16; Item 16, Box 119, RCA,FRC, Seattle.

27. Robert Yellowtail to John Collier, June 13, 1935, Item 16, Box 148, "Education, 1935," RCA, FRC, Seattle.

# CRAZY SNAKE AND THE CREEK STRUGGLE FOR SOVEREIGNTY: NATIVE AMERICAN LEGAL CULTURE AND AMERICAN LAW

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The continued strength of Native American culture in the 1980s has a clear relationship to the renewed attention that sovereignty has received as a key unifying concept in both "Indian law" (and here I mean both federal Indian law and tribal law) and in tribal politics.<sup>1</sup> The precise nature of this relationship is complex, for in tribal society culture, law, and politics are all indivisible parts of the whole life of a people. The fact of this indivisibility should not stop us from trying to better understand each constituent part. Law has long been studied as a means of understanding tribal culture. A core value in tribal law, at least since white society entered into an imperialistic and colonial relationship with tribal society, has been sovereignty. Sovereignty, in turn, in a tribal world surrounded by an aggressive and imperialistic white culture, is critical in the protection of all forms of tribal culture and society.

The rise of a tribal law with a deep emphasis on sovereignty parallels the imposition of white laws, values, and institutional forms on tribal society. As white institutions forced themselves with ever increasing strength against the tribes the traditional legal orders of tribal peoples changed. Tribal law became more centralized, moving from operating primarily at the band and clan level to the level of the tribe or nation, serving to create and institutionalize a political structure with sufficient power and imagination to develop effective strategies for the protection of tribal society. It further came to provide new ways of effecting some measure of social control and of structuring rapid social change within the tribe. Tribal law both provided a vehicle for the controlled introduction of new social forms into tribal society, and also mediated between complex and changing tribal factions as Native people struggled to readjust to the imposition of American power. Finally, law in white society had a high symbolic value, even on the frontier.<sup>2</sup> Hence, tribal law provided an equally valued framework for negotiation with white society. Similarly, American law itself came to have meaning in tribal society as tribal political leaders used it in complex negotiations with the Americans.<sup>3</sup> Thus, the period when American law and tribal law meet is an important opportunity to study a variety of complex interrelationships between law and rapidly changing social orders. This study is of continuing legal significance because, in spite of three hundred years of genocide and forced assimilation, several hundred Native American societies, each with their own laws and legal histories, still exist within the borders of the United States.

## I. NATIVE AMERICAN LEGAL CULTURE

The end result of this process, begun in the nineteenth century, is that Native American societies have a unique legal culture very distinct from white American legal culture and centered on the protection of tribal sovereignty. The idea of law and of legality in the ordering of life is more deeply entrenched in native law than it is in American law generally because of the

critical role that law has played in protecting tribal sovereignty. Law and legal tradition, both native and American, have been more deeply felt because of the unique legal status of Native Americans, and the key role of law in defining that status.<sup>4</sup> Moreover, the place of legal culture in tribal life is not only deeply intertwined with the idea of tribal sovereignty, but also with the political, economic, and social means of fighting for it. In this context the long record of illegality of American law in relationship to the tribes has had the opposite effect on tribal law: it places renewed emphasis on traditional native principles of law and justice in sharp juxtaposition to the brutal, racist, instrumental, and corrupt character of American law. Thus, even to the extent that such laws as the Dawes and Curtis Acts represented great assaults on tribal sovereignty, they had, at least in part, the impact of encouraging traditional tribal mechanisms of protecting tribal sovereignty.<sup>5</sup>

While the legal culture of each tribe is distinct, the Creek history of Crazy Snake, his people's rejection of imposed white law and institutions, their retreat to Hickory Ground, their restoration of the "old law" on the Creek people, and his simple demand of American authorities: "Give us back our law," illustrates this process, one that was repeated in smaller, less spectacular (and probably less successful) ways in tribal communities all over America. While Crazy Snake's movement may have lasted for ten years on a very large scale (and doubtlessly never died) it is unique only in its size and strength. Every reservation had such nationalist movements. Crow Dog, for example, after his famous legal victory over the Bureau of Indian Affairs and a Dakota Territorial court, lived a long life on a far corner of the Rosebud Reservation, a proud and defiant member of a faction derisively called "kickers" by the Indian Agent because of their rejection of allotment, the Christian religion, and the agent's political and legal authority. It was the second decade of the twentieth century before the Agent dared create a tribal court--the kickers were too powerful, too angry, and completely unaccepting of imposed American law.<sup>6</sup> Thus, it is important not to see Crazy Snake and the Creek struggle as an isolated example possible only for one very traditional people.

## II. CREEK LEGAL HISTORY

Each Native people has a unique legal history, the product of the meeting of that tribe's law and legal culture with American law and legal institutions which, in turn, was imposed in different ways on different tribes requiring different forms of tribal resistance to protect their sovereignty. A good deal more is known about the Creeks than we know about most native people because of the fine work of historians Michael Green and Angie Debo.<sup>7</sup> The history of native people has been written in many different ways with any number of focuses, but both Green and Debo gave Creek law and legal change a prominent place in their respective (although very different) analyses of Creek society and its relationship with the United States in the 19th century, Green for the initial period of Creek resistance in the South, Debo for the rebuilding of Creek society in the Indian Territory.

Green carefully describes the internal struggles within Creek society in early 19th century Alabama in an effort to find the most effective ways to protect Creek lands and sovereignty and to resist the violent and increasing demands of whites for land. Factional struggles were always complex in Creek society for the Muskogee people were a loose alliance of a number of different peoples with each village retaining a high level of not only political autonomy

but also some measure of cultural autonomy as well. Faced with an accommodationist strategy to sell most Creek land as one way to preserve the rest of the tribal land, the Upper Creeks, meeting in council in 1824, proclaimed a "law of Polecat Springs," forbidding the selling of tribal land on pain of death.<sup>8</sup> A force of up to 400 warriors later went to the plantation of William McIntosh, an accommodationist Lower Creek chief, set fire to the house, permitted all guests to leave except those in violation of the law, and shot to death McIntosh and one other chief carrying out the penalty of the law.<sup>9</sup>

Green recognized the great significance of the "law of Polecat Springs." Not only did it become the foundation of a unique Creek legal culture, a unifying force in Creek law for not only the rest of the century, but continuing to the present day. This legal event marked the beginning of a national Creek political organization, an evolution to a more formal organization on a larger scale. This was a great change from the traditionally local and autonomous Creek political and legal organization designed to meet the increasing pressure of more powerful American institutions. American law and legal institutions directly shaped tribal law and legal institutions. American pressure to buy land produced Creek laws to block that sale and Creek political and legal institutions to enforce that law. While the Creek council that made and enforced the law of Polecat Springs had clear roots in traditional Creek society, it was not the traditional council but a new form of council shaped by Creek contact with American institutions as well as with neighboring Cherokee institutions.<sup>10</sup>

The process of "imagining" a Creek Nation (as Green termed it) took perhaps thirty years, with formal, national law-making beginning in 1808. This new legal process was built on the old. Creek traditional law lived within the clan structure, involving the welfare of clan members, the socialization of young people, and harmony with a complex natural world. While clansmen could avenge wrongs done their clan, they also operated in a village context, where disputes that threatened village harmony could be settled by councils, and in a tribal context, where inter-village disputes that threatened the tribe could also be settled by tribal councils, a process that grew more regularized as relations with Europeans forced the Creeks to act with greater tribal unity.<sup>11</sup>

Ultimately, clan and village traditions came into greater and greater conflicts with this new national order. For example, among the first national laws was a law forbidding blood revenge because the continuation of the practice both destabilized inter-village relations, and also because the Creek "lighthorsemen," warriors who served broad police functions, risked being killed or injured in revenge for their work in enforcing national law. But this new legal order never fully replaced the old; rather the two operated side by side, each serving a distinct set of tribal functions.<sup>12</sup>

This changing, but still traditional and sovereign, Creek society was removed to the Indian Territory and there created the Creek Nation, a part of a unique American experiment in tribal sovereignty there. Enough is still not known about the five Indian nations that were created there but a further understanding of the nature of the institutional processes that evolved, including the legal, is a critical part of understanding native forms of adaptation to American society. Much of the historical emphasis on these governments focuses on how "civilized," meaning Americanized, they were: popularly elected chiefs, bicameral legislatures, universal male suffrage, secret ballots, two-tiered court systems, courthouses, high sheriffs, lighthorsemen, and schools. But a closer look reveals that a good many of the forms that the

Americans imposed on the tribes were adopted but much less of the substance. Tribal values and tribal sovereignty lived within institutions that looked "American." There can be no questions that this was one part of a conscious Creek strategy to protect tribal traditions and sovereignty.<sup>13</sup>

This is the central theme of Angie Debo's, Road to Disappearance, a now classic history of the Creek in the Indian Territory. This study is also a great work in legal history for it shows clearly that the Road to Disappearance was paved, not with good intentions, but with the law, both American and Creek, in every form--case after case, dispute after dispute, killing after killing, problem after problem, and resolution after resolution. Perhaps amazingly, but only from the standpoint of white society, Creek society adapted to event after event, including at least three civil wars in thirty years, that might have ripped any other society apart. This was all survived by a tribal society of 8,000 people wholly surrounded by a rapidly expanding American society of more than forty million, ripped apart by its own civil war. Angie Debo shows very clearly the centrality of a changing Creek law and Creek political and legal institutions in maintaining this complex social order in the face of imperialism and revolutionary social change.

In the Creek, as well as in each of the other Indian Nations, the Cherokee, Choctaw, Chickasaw, and Seminole, there were two parallel sets of tribal laws. There can be no question that a traditional law, largely invisible to whites, functioned alongside the formal legal institutions of the Indian nations, a set of legal institutions adopted by the elected National Councils and based on American law. There are broad indications of this parallel structure time after time. For example, in the Green Peach War of 1881-82, the most serious of all Creek civil wars, with several hundreds of mounted, heavily armed men on each side, there were only a handful of killings. When the killers were brought up before the formal legal institutions of the Creek Nation a few were sentenced to death but then pardoned. It must be evident that only strong traditional laws controlling killings within the tribe could have kept the casualties so low, and structured the pardoning of the killers convicted under a national law that, while not traditional, was subject to the control of national political processes that were responsive to changing tribal laws and values. Thus, even what was "traditional" changed over time from generation to generation.<sup>14</sup>

The two-tiered Creek court system outwardly resembled that of many American jurisdictions. But only civil cases could be appealed from the district courts to the Creek Supreme Court. Criminal cases were only appealable to the Principle Chief, who had a full pardon power unrestricted by the formal law of the Creek Nation but obviously structured by traditional law was not only protected, but deliberately left an important arena of function, mediating between the formal requirements of the new legal system and traditional Creek notions of law and justice.<sup>15</sup>

A further example of the maintenance of the core of traditional law within the written code of the Creek Nation is revealed in the trial of routine criminal cases. Even the simplest case often took three or four days to process. Court would be called early one morning, and a roll taken of a long list of jurors and witnesses, all summoned by lighthorsemen and paid \$2 a day in a society with a per capita cash income of perhaps \$25 to \$50 a year. Inevitably some of the parties were still missing and court sessions were postponed until afternoon, then until the next day. Judicial districts with populations of no more than 600 have routine trials with thirty or forty people present in various official capacities and all paid. The proceedings were slow and carefully deliberative. There can

be no question that men and women met for long days--effectively but informally "in council" even though a formal, elective bicameral legislature legally had the function of national council. After three or four days one or two men would be tried, most often for stealing livestock. Most defendants were acquitted. Creek tradition gave great weight to personal integrity and juries had a difficult time convicting a defendant over his word that he was not guilty of the offense. Occasionally defendants were convicted and whipped on the spot and the meeting would disperse. Obviously there could be no appeal after the sentence had already been carried out. Twenty to thirty people would be paid from \$4 to \$8 each, financing (and probably feeding) the whole event.<sup>16</sup>

While we know little about the social process that selected the few cases that were tried, a careful reading of the issues raised in the cases reveals a great deal. Many of the offenses concerned both confusion about and challenges to new forms of property relations. In a large number of theft cases (and most involved pigs) the defense raised was that the pig belonged to the defendant, and not a denial of the offense. The court records contain long, almost unfathomable, descriptions of exactly how this ownership claim arose, often involving complex transactions between three or four parties, changing family and clan relationships, and detailed descriptions of the markings of the pigs. Thus, it seems that the new tribal law was used where traditional clan-based law and social relations either broke down, or could not adequately cover changing property relations.<sup>17</sup>

Similarly, the geography of the Creek towns, the traditional clan-based political and social unit, changed. In the South the towns were geographic units as well as political units, hence all those under the political unit lived among each other. In the Creek Nation in the Indian Territory while the Upper and Lower Creek towns generally separated, members of individual towns dispersed on small farms over a wide area, living among members of other towns. No traditional laws covered the range of interpersonal conflicts that arose, nor did any traditional clans have jurisdiction among inter-clan differences.<sup>18</sup>

Thus, the six Creek District Courts filled much of this gap, just as the large gatherings on court days also probably allowed the different clans to come together to informally process problems and conflicts that arose. The Creek courts were more than merely the legal branch of the Creek nation government. While the national government served to process the social and political concerns of a progressive or mixed-blood faction seeking greater accommodation with American society, the district courts created a new local structure where traditional Creeks, seeking the sovereignty to maintain as much of their traditional life, could meet and work out their adaptive strategies. At the same time, the district courts and lighthorsemen functioned as the only institutions of the national Creek government operating on the local level, serving an important mediative function between the new formal tribal institutions, and traditional political and legal ways.<sup>19</sup>

On the national level, the National Council, in its law making, served a parallel function meditating between the Creek Nation, neighboring Indian Nations, and the United States. The exact history of each of the American legal forms that were adopted by the Creek Nation doubtlessly contains within it a history of how the Creeks reshaped it to protect Creek sovereignty and create an environment in which traditional Creek life could be maintained. One example where this is perhaps the most difficult is in the area of the civil law,

largely the law of the Creek Nation for dealing with new property relations that had no parallel in traditional Creek law.

While virtually all forms of holding property changed juridically after the formation of the Creek Nation, one new law that affected every Creek family was the law of succession. Traditional Creek society had very complex mechanisms for the disposing of a dead person's property spread throughout a clan structure. After the 1870s Creek law copied American law in largely leaving all property within the nuclear family to spouses and children. Because there was no traditional law governing these transactions almost all the civil work of the Creek district courts consisted of dividing these small estates. The law provided a traditional mechanism for this division if it could not provide a traditional law. Each estate, Creek law provided, had to be "counted" by three disinterested persons. In the record books of the Creek district courts are found the simple reports of these "counted" estates, down to each pig and chicken, each pot and pan, each table and tablecloth, the meager property of every Creek family. The formal power of the Creek courts, even at the relatively accessible district level, was balanced with the informal input of traditional leaders here simply "counting" the property in an estate and reporting it back to the court for allocation.<sup>20</sup>

Since there was no place in such a legal order for the more complex legal problems that Americans brought into the Creek Nation, the Creek Nation created a unique role for its Supreme Court. This court primarily functioned as the civil trial court for all complex matters and was staffed by three judges, more skilled in the formal national law than the district court judges. Complex civil cases could be effectively adjudicated with competent decisions rendered in the form of written opinions. This two tiered system of justice while copied in form after the United States, did not copy the substance. While two-tiered in appearance, it did not actually function as a system of lower courts under an appellate Supreme Court. Rather, the Supreme Court was primarily a trial court for complex cases, and, in fact, there was effectively no appellate court, although a few district court civil cases were appealed. The Creek national court system was more on the model of a system of two parallel court structures, traditional at the district court level, and primarily used by local Creeks and formal at the Supreme Court level and primarily used by large property holders.<sup>21</sup>

Creek courts were not only very accessible to the general population because they primarily functioned at the district level and employed a large proportion of the population in various official capacities, but the selection of judges reveals a lack of professionalization and clear political responsibility to those affected by the law. In the last thirty years of the Creek Nation 147 men served as judges. They occupied only nine judicial positions, six district judges and three Supreme Court judges, indicating an average term of under two years. None had any legal training and most were not literate in English. Given the Creek Nation's small population, this indicates that perhaps 7% of all adult males served as judges during this period, establishing that the formal legal role of judge was kept open and accessible to the entire politically active population.<sup>22</sup>

More study of the institutions of the Indian nations will reveal a great deal about the forms the tribes used to resist white encroachment on tribal sovereignty. But this whole legal history moves on to an unhappy ending. The territorial sovereignty of these Indian Nations was unilaterally terminated by an Act of Congress, the Curtis Act, on July 1, 1898. Although the tribal governments were left intact, they were deprived of virtually all governing

functions. The story of this termination is well known, a classic example of the illegality of American law, "legal" under the plenary power doctrine.<sup>23</sup> The lands of the Indian Nations had been purchased in fee simple from the United States with money paid the tribes for their lands in the East and were the property of the tribes. The sovereignty of these nations was more than a residual sovereignty running from the beginning of time as a free people. It was also a sovereignty recognized hundreds of times by the United States government by both treaties and all forms of relations with the Creek Nation, Cherokee Nation, and the other nations, all recognized in precisely those terms in act after act.<sup>24</sup>

For more than ten years the United States carried on a charade of legality in negotiating for the voluntary termination of these lands but all of the nations refused. The Curtis Act did more than terminate the territorial sovereignty of the Nations. It sought to destroy their political sovereignty as well, providing that the elected councils not exercise any powers and prohibiting their courts from hearing cases and issuing judgments. For the Creeks, this meant that the Creek National Council remained but only for the purpose of carrying out a few very limited functions necessary for the final federal termination of the tribe. For example, a major function of the tribal government was to make a tribal roll of all persons eligible for allotment of tribal lands. Thus, in its "final days" the functioning of the Creek National government was in violation of its own law, the law of Polecat Springs, and a hollow shell of its former existence serving a federal function intended to deprive the Creek of their lands.<sup>25</sup>

Every American now knows that the reason for that termination was imperialism, the white desire for valuable tribal lands. Ironically, at the time a major justification, put forward for more than twenty years, was to protect both Indians and whites from the corrupt and unjust legal processes of the Indian Nations. This has the double irony of traditional peoples, effectively adapting and using American legal forms, only to have that skill itself become evidence that they were "uncivilized."<sup>26</sup>

### III. CRAZY SNAKE'S REBELLION

Crazy Snake, or Chitto Harjo, was one of a number of traditional Creek leaders who opposed allotment. We simply do not know what Crazy Snake did immediately after the Creek termination in the summer of 1898. The evidence suggests that, like Crow Dog and the "kickers" on the Rosebud, he never did anything other than honor traditional law and preserve a traditional life in a remote region of the reservation. American authorities ignored Crazy Snake and his people--and also probably lacked the authority to intervene. Moreover, the use of force against the Creek would have exposed the American myth of "voluntary" termination. But Crazy Snake and his movement grew and grew, setting the stage for confrontation. These Creeks did not recognize the federal alienation of Creek lands because they saw the sale of this land as in violation of Creek law. Within less than two years of termination a traditional Creek government met on Hickory Ground, south of Henryetta in the heart of their nation. Traditional government, not being created by the laws of the United States, could not be limited by the laws of the United States nor could it be compelled to perform federal functions in alienating Creek lands. It is not clear precisely what Crazy Snake had in mind in relation to the existing Creek National Council. A reasonable deduction, however, given the history in Creek

politics of the repeated succession of opposites in the domination of the National Council, was that Crazy Snake's followers intended to contest the next national election (in 1903), an election that would put in power the Creek National Council that would exist in 1906 when the existing Creek government had agreed to permanently disband the National Council as required by an agreement supplemental to the Curtis Act, ratified by the National Council in 1901. Once in power it seems likely that the "Snakes," as they came to be called, would have renounced all collaborationist acts of the existing National Council and refused to either disband or relinquish tribal authority.<sup>27</sup>

A great deal more is known legally about Crazy Snake's rebellion than we know about its traditional meaning. The United States Attorney in Muskogee in March 1901 secured the indictments of 253 named Creeks for "conspiracy to deprive unknown persons of their personal liberty" and "detaining them without lawful authority." In the most massive indictment of American Indians in United States history a federal grand jury accused these Creeks of "willfully and feloniously forming a certain government ... purporting to be the legal and lawful government of the Muskogee tribe of Indians, and elected a chief, second chief, a twelve member cabinet to advise the chiefs, members of the House of Warriors and the House of Kings, as well as a judicial branch and lighthorsemen."<sup>28</sup>

As if all these charges--of conspiring to create a traditional Creek government--were not sufficient, a number of the same people were indicted for assault and battery. The assault and battery indictment stemmed from a series of actions that this traditional government had engaged in to extend its power far out into the Creek Nation. A number of the lighthorsemen had arrested and whipped Creeks for the violation of the "old law," the law of Polecat Springs. While it had obviously taken some time for the Creeks to reorganize their entire government at Hickory Ground, it was this direct action in applying that law that brought down the wrath of federal law.<sup>29</sup>

The primary object of this traditional Creek government was to block allotment and restore traditional law. Many of the whippings stemmed from the violation of this law posted all over the Creek Nation:

Hickorytown, Oct. 11th, 1900

From this on the citizen of Creek citizen in the Creek Nation as far as the Creek line extend and also there shall be no laborers employed. This law created according to treaty. [A]ny person violating this law shall be fined the sum of \$100..., and shall be payed [sic] to the Nation also shall receive fifty lashes on his bare back. Any person who was employed shall be removed by the principal chief....Also any person...should interfere such notice shall be fined the sum of \$50.<sup>30</sup>

The Snakes believed they had authority under the treaties to proclaim this law. They based this authority on a letter that they had received from the Acting Secretary of the Interior promising to "honor all Indian treaties." This, to the minds of traditional Creeks, was an admission that the liquidation of their national government by the Curtis Act was illegal.<sup>31</sup>

We must see in this exchange a clear sense of legality in the minds of these Creek leaders. They engaged, by mail, in an exchange with the Bureau of Indian Affairs and the Department of the Interior, in a discussion about their

sovereign right to their "old law." They based this on their specific right to that law, contained in each of the Creek treaties that created the Creek Nation. Therefore, the secretary's acknowledgement of that treaty created the complete legal basis to recreate the traditional Creek government. Only through the hindsight of hundreds of years of broken treaties can it now be understood how an official of the United States government could promise to honor a treaty and not expect that statement to have any legal impact on the Creek people. But the Snakes took him at his word.

To this day we do not know the full extent of the Snake government's operations. While the press was full of exaggeration (for example, calling it Crazy Snake's rebellion, when it was a simple reassertion of traditional law), newspapers reported four large parties of Snakes, posting notices and enforcing their law in different parts of the Creek nation. No one knows how many law violators were whipped. None of them gave any evidence in any formal legal proceedings. At a time when the Creek population probably did not number much over 8,000, meaning perhaps 2,000 adult males at most, 12% of the adult males were charged, by name, in the federal indictment. There can be no question that the actual number involved was greater and the number of supporters of that old government greater still. It does not stretch the evidence far to suggest that it commanded the support of the majority of Creek men. Beyond any doubt this reveals the depth of traditional support in the Creek Nation and shows that Creek sovereignty was not terminated by the Curtis Act.<sup>32</sup>

The reorganization of traditional government and its resumption of many of its functions is not the only evidence of the strength of this sovereignty. It can be seen in the events that followed as well. Few modern political movements survive the federal indictments of 253 members but Crazy Snake's movement did. All of the indicted plead guilty in a plea bargain arrangement that earned all of them pardons although they were all held in prison for a short time. While the plea bargain may have been a mistake because the government would undoubtedly not have been able to prove most of the charges, it did gain the freedom of all. Perhaps more important, it spared traditional Creek political life from the intrusion of white lawyers, courts, trials, juries and exaggerated newspaper reports. In their admission of guilt (prepared by their lawyers), we gain a clear sense of the simplicity of their intention:

We state that as citizens of the Creek Nation we have been opposed to the abolition of our courts by any act of congress and to any change in our tribal form of government, and that, in October 1900, we met together and agreed to form a government of our own...

That it was our intention and purpose to pass laws and to execute the same upon all citizens without regard to any act of Congress in force in the Creek Nation.

That said government was formed for the purpose of causing the arrest, imprisonment, and punishment of all persons, citizens of the Creek Nation, who should take any allotment of lands or rent any lands to non-citizens of this Creek Nation, or employ any white non-citizens in any capacity whatsoever.

But these guilty pleas did not put an end to the Snake government. Rather, it seems to have gone underground ceasing only the highly visible enforcement of its laws by lighthorsemen. Chitto Harjo returned to his simple log cabin and remained a visible Creek leader through a second rebellion in 1907. Although not much is known about Chitto Harjo what is known reveals a good deal about traditional Creek life. He lived in poverty, existing on subsistence economy. In his late fifties, he had never been an important leader in Creek national politics but had served in the House of Kings, the upper house in the bicameral Creek Nation legislature. His emergence as a traditional leader after the Curtis Act suggests that there had always been two parallel power structures in the Creek Nation, one traditional and one formal. Harjo made an eloquent speech in Creek (he did not know English) before a Congressional Committee visiting Tulsa in 1906. His speech demanded simple justice and a return to traditional government.<sup>34</sup>

This government was functioning at Hickory Ground in 1907 probably never having ceased operation. Allotment and white encroachment had impoverished traditional Creeks. Complicating our understanding of the 1907 rebellion was the presence of a large number of black Creeks as well as non-Creek blacks. Traditional Creeks had a longstanding alliance with black Creeks in national politics. By now, federal authority in the Creek Nation had been replaced by state authority and state authority was even less sympathetic to Creek sovereignty than the federal government. The presence of a Creek Nation within Oklahoma was a political embarrassment to the authorities of the new state, as well as a potential challenge to state economic interests. Moreover, racism directed at both Creeks and blacks was rampant. The state militia attacked Hickory Ground using the excuse that people there were raiding local smokehouses for hams (thus the name the "smoked meat rebellion"). Several blacks were killed in the attack. Local deputies blaming Crazy Snake for the events at Hickory Ground went to his cabin to arrest him. At least nine other traditional Creeks were assembled there to escort him to Hickory Ground and gunfire broke out, killing two deputies, Crazy Snake was badly wounded but escaped, living out the remaining three years of his life a wanted man hidden in the hills by traditional Choctaw.<sup>35</sup>

To this day, it is clear that the traditional councils simply moved from Hickory Ground and continued their government wherever they could meet. When anthropologist Morris Opler studied Creek political organization in 1937, he reported the traditional town governments strong and vital. Traditional Creek law moved back from the national level (where it had initially gone only in the early 19th century in response to American power) to the more traditional town level.<sup>36</sup> Thus, we can see the irony in the use of the legalistic term "perporting" to organize a government, and "perporting" to make law in the Crazy Snake indictments. We might better say that the United States "perported to abolish Creek sovereignty."

Through the hindsight of late 19th century federal Indian law, we can see that the impact of Crazy Snake's traditional movement was even greater than it appeared at the time. In August of 1907 the Creek National Council, still extant, although deprived of almost all of its powers, met and called for the usual four year election for tribal officers, held under the Creek constitution of 1867. This council meeting itself shows the persistence of Creek resistance, even among council members actively negotiating allotment. The council was supposed to cease existing in 1906 under an agreement between the council and the BIA. In fact the writer Hamlin Garland wrote a moving description of the

last meeting of the Creek National Council.<sup>37</sup> While Garland was wrong, the BIA was planning to abolish by fiat what it could not abolish in fact.

The Bureau of Indian Affairs as well as the Principle Chief, Pleasant Porter, who had presided over the allotment of Creek lands, believed that continuing the existing government would be more satisfactory to the United States than holding an election and "strengthening the Snake movement." In the midst of this confusion, Porter died suddenly. President Theodore Roosevelt, relying on Section 6 of the Five Civilized Tribes Act of 1905 providing that the President of the United States could appoint a chief if a chief refused to perform his duties under the Act, immediately appointed a Creek Principle Chief defying the National Council and blocking a trial election that the government was afraid the Snakes might win.<sup>38</sup>

These facts are among those relied on in Harjo v. Kleppe a 1976 United States District Court opinion holding that the Creek National Council had never been lawfully stripped of its power and was still the legal governing council of the Creeks. The court found that Curtis Act's removal of most of the powers of the Creek Government and National Council related to territorial sovereignty only over the former Creek Nation but did not extend to any diminishing of the political power of the National Council. The Snakes, of course, by not recognizing the Curtis Act contested their loss of territorial sovereignty as well as political sovereignty. By forcing President Roosevelt to name the next chief illegally by-passing the remaining political sovereignty of the national council, the Snakes revealed the depth of the traditional legal culture of the Creeks, a culture that could not partition the different elements of Creek sovereignty.

#### IV. CONCLUSION

There can be no question that sovereignty and tribal autonomy are the main themes of the legal history of the Creek people. To the extent that a current "new sovereignty" paradigm is at the root of analysis of federal Indian law, it is important to recognize that Indian law in the United States is a law with two distinct sets of roots that are interrelated. Federal Indian law, which is most often what is referred to when we refer to "Indian law" is the history of expanding federal authority over the tribes. While sovereignty has a clear and important history here, beginning before the Cherokee cases, it is not the dominant theme. The tribes also have a law that has a long legal history with sovereignty at its core.

This is not an "Indian law" that is somehow quaint and interesting only to anthropologists and ethnologists attempting to describe tribal dispute resolution methods before white contact. Rather, this is an Indian law that reflects the evolution of traditional tribal law through a succession of periods of the increasing imposition of American law. Often this traditional law takes on the form of American law but maintains a traditional value system at its core.

The struggle of Crazy Snake and his people for sovereignty over their land, for the restoration of the "old law," the law of Polecat Springs, shows how Creek law evolved parallel to American law over a hundred year period. Creek society underwent major social change during this period and repeatedly modified both their substantive laws and their legal institutions. But through all this the Creek people embodied the "law of Polecat Springs" in the heart of their legal culture. It was a law that permitted great flexibility and change yet which also carried certain requirements that could not be yielded. Territorial sovereignty was not negotiable nor was the sale of land. This law and legal

culture was evidence to the Snakes and they adhered to it until the power of their movement was felt in the White House. Nor did their culture change merely because they were defeated: indicted, imprisoned, ultimately shot and dispersed. They changed the form of Creek law and legal culture reverting to their traditional town form of government until they could rebuild a Creek national government with a good measure of tribal sovereignty.

In Harjo v. Kleppe we see how the Snakes struggle for sovereignty impacted on both American law and on Creek law. Even though the violently assimilationist "big stick" Indian policy prevailed in the ten year struggle with the Snakes the existence of that struggle forever prevents any legal fiction in federal Indian law that the Creeks consented. Their law and their legal position of that event stands not only in the legal culture of the Creek people, but has been recognized by federal law and may yet be reincorporated into federal Indian law. We cannot predict the outcome of the future Creek cases, but we can predict that there will be more Creek cases in the American courts. These cases will go on--forever or until the United States and the Creeks come to an agreement that recognizes Creek sovereignty in a way acceptable to the tribe. In turn, what is acceptable exists not as an abstract and unknowable principle but in the traditional law and evolving legal culture of the Creek people.

## NOTES

1. "Indian law" refers to all laws specific to the status of Native Americans. It encompasses at least three distinct legal traditions, with three corresponding bodies of law. (1) the traditional laws, and legal institutions of native people; (2) the enacted tribal laws of the nearly two hundred tribes with autonomous legal systems; (3) American state and federal law defining the legal rights of Native Americans. The "Indian law" most commonly referred to by legal scholars is the last, particularly federal Indian law. This is based on a part of one chapter of a forthcoming book. Crow Dog's Case: Indian Law and American Law in the Nineteenth Century which shows how the tribes struggled to protect their law and sovereignty in order to accommodate changing American law, showing how the tribes structured American law.

2. There is a substantial literature in legal history on how the frontier shaped American law, an issue directly related to Frederick Jackson Turner's seminal work, The Frontier in American History. New York, 1920. There are dozens of legal histories taking up this theme. The best is undoubtedly James Willard Hurst, Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin, 1836-1920. Cambridge: Harvard University Press, 1964.

3. The single most important example of the tribes seizing on the form of American law as a way to retain tribal sovereignty is that of the Cherokee Nation, both in the South and in Oklahoma. On the early Cherokee adaptation see William McLoughlin, Cherokees and Missionaries, 1789-1839. New Haven: Yale University Press, 1984; and Cherokee Renaissance in the New Republic. Princeton: Princeton University Press, 1986. For a history including the critical period of the Cherokee Nation in the Indian Territory see Rennard Strickland, Fire and Spirits: Cherokee Law From Clan to Court. Norman: University of Oklahoma Press, 1975.

4. Obviously, this is a hypothesis, for it is impossible to prove empirically. For a general discussion of the sociological literature on law and legal culture, see Roger Cotterrell, The Sociology of Law: An Introduction. London: Butterworth's, 1984, especially part I, "The Social Basis of Law".

Here it might be useful to include a personal statement of how I first saw this relationship. On a Newberry Fellows tour of eight Native American communities in Southern California and Arizona in 1986, I was travelling with anthropologists, archaeologists, historians, and a scholar of American Indian literature. The native people we met invariable wanted to know about our work, and, as a lawyer, I was always embarrassed when legal questions always came to dominate the discussions which followed. The fellows talked about this, and came to understand that questions of law had a special meaning in native society, quite unlike the meaning law had in the dominant American society.

5. The history of American law in its dealings with native people is the subject of a number of important works. For the time and people at hand, Angie Debo's And Still the Waters Run: The Betrayal of the Five Civilized Tribes. (Norman: University of Oklahoma Press, 1984) is the seminal work, proving that the termination of the tribes in Oklahoma was a great crime as well as a tragedy. There is also a substantial legal literature on this history,

for federal Indian law is among the most historical of all sub-fields of law. See, for example, Rob Williams, "The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man's Jurisprudence," 1986 Wisconsin Law Review 219.

6. Sidney L. Haring, "Crow Dog's Case: A Chapter in the History of Tribal Sovereignty," American Indian Law Review 1989, (forthcoming).

7. Michael Green, The Politics of Indian Removal: Creek Government and Society in Crisis. Lincoln: University of Nebraska Press, 1982), and Angie Debo, The Road to Disappearance: A History of the Creek Indians, Norman: University of Oklahoma Press, 1941.

8. Michael Green, op cit, chapter four, "Creek Law and the Treaty of Indian Springs, 1818-1825." Prior to these meetings of the Creeks in national council to make laws, traditional Creek law was made and enforced at the town level. The laws made by the Creek council during this period are contained in Antonio J. Waring, ed., Laws of the Creek Nation, University of Georgia Libraries Miscellanea Publications, No. 1, 1960. For an account of the original Creek law, see John Swanton, Social Organization and Social Usages of the Creek Confederacy, Washington: 42nd Annual Report of the Bureau of American Ethnology, 1924-25.

9. This event is reported in Green, op cit, at 96. Green further reports that President John Quincy Adams, while saddened by the deaths of Creek chiefs friendly to American interests, nevertheless believed the executions "legal" and did not treat the killings as a crime inviting American punishment or retaliation. (at 100)

10. Green, op cit, at 77-81. Also Michael Green, "The Treason of William McIntosh: Creek Law and Government in the Removal Crisis of the 1820s." Paper presented at the Annual Meetings of the American Society for Legal History, New Orleans, October 1985.

11. Id.

12. The parallel existence of both traditional and modernizing political and legal structures is a central theme of Green's analysis. See, op cit, chapter 4.

13. There is a voluminous literature on the Five Civilized Tribes, including histories of each. In addition to Angie Debo's work cited above, see her Rise and Fall of the Choctaw Republic, Norman: University of Oklahoma Press, 1934; and Morris Wardell's, A Political History of the Cherokee Nation, 1838-1907, Norman: University of Oklahoma Press, 1938 for studies of institutional development in the Indian Nations.

14. Debo, Road to Disappearance, chapter 8, "The Green Peach War."

15. The observations of the nature of the Creek courts contained here, and in the following paragraphs, are based on an ongoing study of the records of the Creek courts. These records are on microfilm on CRN rolls 17, 18, and 19,

with the originals held in the Five Civilized Tribes Archives in the Oklahoma State Historical Society.

16. This description is not of any particular case, but describes the general processing of criminal cases. It might be noted that, for many cases, the record of expenditures is longer than the record of the disposition of the case.

17. Creek criminal case records were kept in docket books. Each case occupies from a half page to ten or more pages, listing the date, parties present, the charge, and disposition. In addition, many cases contain summaries of the evidence, often in great detail and appearing to synopsize testimony. Virtually all the cases are either assaults or thefts. Both offenses were quite frequent, at least as common, if not more common, than comparable offenses in white society. Coweta District, a remote rural area, had 163 criminal cases between 1882 and 1895. Eufala District, including Muskogee, the largest population center in the Nation, had 450 criminal cases between 1889 and 1897. As in White society, property offenses far outnumbered assaults, amounting to about 80 per cent of all criminal offenses.

18. Debo discusses the difficulties involved in re-establishing the towns in the Indian Territory at 122-124. Morris Opler, *Creek Indian Towns in Oklahoma* in 1937. Norman: University of Oklahoma, Department of Anthropology, 1972 is an important report on the survival of Creek towns into the twentieth century that contains a great deal of historical data about the adaptations that the Creek towns made after removal.

19. John H. Moore, "The Muskogee National Question in Oklahoma," 52 Science and Society 163 (1988) argues that the courts were left to the full-bloods, while the National Council was in the hands of the mixed-bloods. This, in itself, both uses these structures as a mediating force in Creek politics, as well as divides national institutions between two political factions.

20. The records of the Creek civil courts were kept in logbooks, parallel to the records of the criminal courts. The property in each estate is carefully recorded in these record books. For many of the six district courts, virtually the only civil cases are these meager estates.

21. The cases heard in the Creek Supreme Court are completely different cases than the cases heard in the district courts. For example, while the district courts are full of cases involving pigs and chickens, the Supreme court is full of cases involving cattle and horses. Supreme Court cases involved a full range of disputes over property and contracts, not unlike parallel courts in American society. The formal relationship between the Supreme Court and the District courts, as well as the civil and criminal law of the Creek Nation, is published in Acts and Resolutions of the National Council of the Creek Nation. Muskogee: Phoenix Printing Company, 1900. This is the last and most complete edition of a volume published several times in the 1880s and 1890s.

22. A complete list of Creek judges is found in the "Creek vertical files" in the Oklahoma State Historical Society Archives, Oklahoma City, under the subject "courts." A few names appear twice and several men appear under slightly different names. In my enumeration I counted each man individually

unless he had clearly previously been counted. In spite of the short terms on average, some judges had long tenures. Coweta Micco of Coweta District served for nearly twenty years. Micco was also the undisputed traditional leader of Coweta District. This suggests that many traditional Creeks preferred to work at the level of the district courts instead of in national politics. Thus, even the offices of the national Creek government were divided on different levels with traditionals left in charge of local offices.

23. The "plenary power doctrine," first laid down by the United States Supreme Court in U.S. v. Kagama 118 U.S. 375 (1886) holds that Congress has virtually unlimited power to unilaterally enact legislation affecting the Indian tribes.

24. The original Creek Treaty of August 7, 1856, 11 Stat. 699, in Article XV provided:

So far as may be compatible with the Constitution of the United States, ... the Creeks and Seminoles shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property, within their respective limits.

Federal relations with the tribes recognized that treaty, incorporated its language into later treaties, and referred to the tribes as "Nations" in numerous laws, government reports, and official actions.

25. Angie Debo, The Road to Disappearance, chapter 11, "The End of the Tribe."

26. The US Congress made extensive use of attacks on the legal systems of the Five Civilized Tribes primarily appearing in the local papers of white communities near the Indian Territory. For examples of this material see, U.S. Senate, Document no. 164. Feb. 27, 1897 (Serial Set, v. 3471), "Memorial to the Members of the Bar of Muskogee and the Northern District of the Indian Territory,..." and J.H. Moore, The Political Condition of the Indians and the Resources of the Indian Territory. St. Louis: Southwestern Book Co., 1874.

27. There is no full historical analysis of Crazy Snake and his movement. Angie Debo, for example, devotes only a single paragraph to it in Road to Disappearance (at 376). This account is primarily based on newspaper accounts, located through the newspaper subject index in the newspaper room of the Oklahoma State Historical Society. For an introduction see, Eleanor Patricia Atwood, "The Crazy Snake Rebellions: A Study in the Breakdown of Tribal Government." Vassar Journal of Undergraduate Studies, XV, May 1942, 44-60. For a sampling of the event as reported in the local press, see Indian Journal, Muskogee, Oklahoma, February 1, 1901, at 4, cols. 1, 2, 3; Vinita, Oklahoma, Chieftain, February 28, 1901, p. 1.

28. "Indictment: United States of America v. Chitto Harjo [and 242 named others]," March 2, 1901. The indictment is held as "U.S. Court in Indian Territory--Muskogee. Criminal case 5581-5584." In Record Group 21. It is impossible to tell exactly how many men were indicted because the clerks misspelled and half-spelled so many of the names. Several people appear to

have been indicted twice. This would indicate that the document was hastily put together without much care.

29. Indian Journal, February 1, 1901 at 4, cols 1, 2, 3.

30. "Indictment," op cit, page 4.

31. "Indictment," op cit, page 6.

32. The census of 1890 reported 8,583 Creeks living in the Creek Nation. Debo, op cit, at 332. The Curtis Act of 1898 effectively terminated the Indian Nations of Oklahoma as political units, dividing national lands in severalty. It led to wholesale theft of Indian lands, and the impoverishment of Indian people. The classic description of this fraud is Angie Debo, And Still the Waters Run: The Betrayal of the Five Civilized Tribes. Princeton: Princeton University Press, 1940.

33. Crazy Snake's speech to this committee is found in John Bartlett Meserve, "The Plea of Crazy Snake," XI Chronicles of Oklahoma, 910-911 (1933). There is only sketchy biographical material on Chitto Harjo. This discussion is based on materials found in the F.S. Barde papers in the Oklahoma State Historical Society Archives. Barde was a newspaperman with some sensitivity to the Creek cause who covered the 1908 Snake uprising. This single file, all undated and unpaginated, contains both extensive contemporary press clippings, as well as copies of untitled, undated typewritten manuscripts that Barde apparently wrote as drafts of newspaper articles.

34. The 1908 Snake uprising is the subject of two articles: Daniel Littlefield and Lonnie Underhill, "The Crazy Snake Uprising of 1909: A Red, Black, or White Affair?" 20 Arizona and the West (1978), and Mel Bolster, "The Smoked Meat Rebellion," XXXI Chronicles of Oklahoma, (1953), 37-55. The State of Oklahoma treated the event as a full scale war, the state's first: see "One General, One War," Daily Oklahoman, April 1, 1951.

35. Morris Opler, "The Creek Town and the Problem of Creek Indian Political Reorganization," in Edward Spicer, Human Problems and Technological Change, 1953. Frank Speck, "The Creek Indians of Taskigi Town," 2 Memoirs of the American Anthropological Association, 1931) independently confirms Opler's work.

36. Lonnie Underhill, "Hamlin Garland and the Final Council of the Creek Nation," Journal of the West 511 (1976). Garland was a member of Theodore Roosevelt's "kitchen cabinet" who advised the President on Indian affairs. The "last meeting" of the Creek National Council that he describes took place on October 10, 1904.

While there [in Muskogee] I learned that the Creeks were having their last meeting in the council house at Okmulgee, and I at once seized the opportunity of witnessing these historic proceedings....For several hours I watched these dusky warriors conferring in their bare and grimy chambers, sensing in their voices the sadness of a vanishing race whose history was fading into myth. (at 511)

Although Garland's description is a quite moving example of the "disappearing Indian" genre of writing, there can be no question that the Creek National Council met for some years after the above date. Neither Garland's description, nor the above article gives any indication of why Garland believed it to be the final meeting. Some of the language seems to indicate that after this meeting the Creeks moved out of the Council House, but it was not formally leased to the City of Okmulgee (for use as a jail) until 1907. (at 520)

37. Harjo v. Kleppe 420 Fed. Supp. 1110 (1976) at 1131-32.

38. Op cit. This case contains a long history of U.S. Creek relations at 1118-1142. A total of 24 pages of this 32 page opinion is devoted to a straight forward history of this relationship, and ultimately, the argument that wins the case is a historical argument--at no point in history was the National Council deprived of its authority in tribal matters. Another argument defining the current national status of the Creeks by showing this historical continuity is John H. Moore, "The Mvskoke National Question in Oklahoma," 52 Science and Society 163 (1988).

## LOCAL-LEVEL POLITICS AND THE STRUGGLE FOR SELF-GOVERNMENT

LORETTA FOWLER

Throughout the reservation period, Indian leaders have acted as intermediaries or middlemen between their people and the wider American society. In this capacity, they have struggled to gain more control for the tribe or individual Indians over Indian-owned resources and to attain the greatest degree of self-government possible, while at the same time retaining the federal protections and services due them under treaty provisions or other agreements. Over the years their specific goals and the means of accomplishing these ends have changed. The success of intermediary leadership has depended on not only the intermediaries' skill in dealing with non-Indians (and other Indian peoples) but also on their ability to be politically effective within their own society. The interplay between the intermediaries' relations with non-Indians, particularly the federal government, and politics at the local level is crucial to understanding political change.<sup>1</sup> In commenting on Fred Hoxie's and Sidney Harring's studies, I will address aspects of this interrelationship that could be pursued further. I also will discuss how the evolution of institutions of intermediary leadership in the early reservation era has shaped politics in the latter half of the twentieth century.

The criteria by which a community's intermediaries are selected and the goals and strategies the intermediaries pursue vis-a-vis federal officials are influenced by the fact that the community is encapsulated within the larger, national political system. Leadership criteria, goals, and strategies are also influenced by local leadership traditions. By "leadership tradition" I do not mean to suggest that ideas and customs are retained unaltered from generation to generation. Rather, members of a community develop or perceive patterns of leadership as representative of cultural identity as it is defined at a particular time. In this way, although there also may be cultural and social continuities, innovations can be interpreted as cultural continuities.<sup>2</sup> Both Fred Hoxie and Sidney Harring are speaking to this point; however, each can strengthen his argument with more attention to the influence of local tradition on the selection and actions of intermediary leaders.

Local political tradition must be considered in the broadest context. Ideas about legitimacy of authority and the limits of power shape local politics. In addition, the way kinship networks influence behavior and offer opportunities for political maneuverings, the interface between ritual or religious and intermediary leadership, patterns of economic exchange--all should be closely examined for the ways they shape relations between intermediaries and constituents over time. Of course, local political traditions change to a large extent in response to events in the wider society. The successes and failures of intermediaries in pursuing group goals (or their constituents' perceptions thereof), and the nature of their relationships with particular federal officials are often beyond the control of the intermediaries themselves yet influence local political tradition.

Sidney Harring's account of Creek strategies raised a number of questions. The extent to which and the way in which Creek ideas and customs changed in response to the struggle for some measure of autonomy is not entirely clear. There seems to be some confusion about the concept of "tradition." For example, we are told that the Polecat Springs council had "clear roots in traditional Creek society." But what is meant by "traditional"? Perhaps events

at that time were interpreted by the Creeks as culturally appropriate and subsequently presented to outsiders or themselves as "traditional," but are there specific continuities between this council's actions and those of earlier ones? Did the various sectors of Creek society--Upper and Lower divisions or elites and commoners, for example-- have different notions of what was traditional? What about the considerable influence of the Cherokees on the National Council and its law codes in the 1820s? How did the institution of chieftainship and the way it was regarded change, particularly after the Creeks began electing chiefs?<sup>3</sup>

In the settlement of estates under National Creek law, we are told that the "counters" were "traditional." Were their roles similar to mortuary duties in earlier times or were they leaders whose behavior or demeanor showed continuities with that of leaders in earlier times? Or, if the meaning of "traditional" is a contemporary one, grounded in the perceptions and goals of Creeks in the nineteenth century, how are we to understand the reaction of Sand, chief of the Upper, "conservative" Creeks in 1867, to the national law code: I wanted to make a law and told them to fix the old Indian law, but they made another, and when we found it out, it was the same as the white man's law? More specifics are needed to understand how traditional informal legal mechanisms functioned alongside the formal institutions adopted by the National Council and based on American law, for Angie Debo observed that a considerable portion of the population ignored the Council and the courts. What about the "slave laws"? According to Debo, these were decidedly a departure from earlier attitudes toward slaves, at least on the part of a majority of the Creeks.<sup>4</sup>

There needs to be a fuller account of how the changing political and legal institutions and the disputes over strategies vis-a-vis the federal and state governments interfaced with town and clan organization and with social stratification and "race." In the Crazy Snake movement, what sector or sectors of Creek society did the participants represent? Is there evidence in the lists of indictments that these people were from all towns, clans, and socio-economic groups, and what proportion were chiefs or other officials? In sum, while Sidney Harring's discussion of the broad outlines of Creek political and legal response to initiatives, challenges, and opportunities from the wider society is interesting, we need more details on the dynamics of internal Creek politico-legal organization.

In his study of Crow political history, Fred Hoxie addresses the problem of how and why Crow politics changed over time. He discusses four incidents or "events" that reveal the nature of change in the reservation community; in each of these cases more detail on political tradition would help to explain why things happened the way they did. In the interpretation of the Sword Bearer incident, there are a number of problems that need to be confronted. What motivated the sixteen young men to shoot up the agency? Was it really merely a challenge to federal authority? Was the failure of other Crows, including "Crow elders," to act due only to the band nature of political organization? It is suggested that age was a primary factor in the incident. If so, were the sixteen challenging the older men because reservation conditions restricted the ability of younger men to compete with older men with large horse herds for wealth and status, as happened on other Northern Plains reservations.<sup>5</sup> The "prairie bands" explanation apparently given by the Indian agent does not seem adequate. How could Sword Bearer and the others have actually expected to support their bands without agency rations and supplies in 1887? Did the actions of Sword Bearer's group represent a bid for influence on the part of clans or an attempt of a

particular men's society to gain prestige? Surely they would not have acted without the support of their clan fathers, given the nature of Crow social organization.<sup>6</sup> It is important to understand the personal agendas, and the strategies of men's societies, clans, bands, and divisions in the Sword Bearer incident. These questions of local political tradition should be addressed.

I also have questions about the strategies and actions of Crow intermediaries in dealing with federal officials at this time. It appears that "Crow elders" and/or "chiefs"--or were these one and the same?--were acting as intermediaries in 1887. What kinds of restraints or new opportunities did the reservation environment pose for intermediaries? What were they trying to accomplish in their dealings with federal officials? (Presumably, one of their goals was to obtain both larger quantities of provisions and control over the distribution of those provisions.) What did their effort have to do with the actions of the Sword Bearer group? Did each band and/or each clan have an intermediary with access to agency provisions? Was Sword Bearer's group attempting to convince other Crows that they should have intermediary leadership positions in lieu of or in addition to those men already acting as middlemen? Did the intermediaries use the Sword Bearer incident to reinforce their standing with other Crow or with the federal officials and, if so, how? Crows did not have complete freedom from federal authority before the Sword Bearer incident--did the incident really mean the end of "complete freedom from federal authority" to the Crows and to the government? Here, as in contemporary times, local political events are both influenced by and help shape Indian-White relations. The quest for self-determination involves strategies in dealings with outsiders but also interplay and struggle between ideas and groups, leaders and constituents at the local level.

We need to know more about the Sword Bearer incident before we can put in perspective the events surrounding the 1899 cession. Was the "unity" demonstrated at the cession really a new development or did the Sword Bearer incident represent more than or something else than inability or unwillingness of Crow leaders to act in unison? Turning to the events of the 1899 cession, how did the band leaders put together a coalition? How were they able to use government patronage or demonstrations of commitment to formal education to influence Crows and federal officials? What social networks did they attempt to manipulate; what personal qualities were effective? We also need a clearer understanding of the relationship between the Mountain Crow and River Crow divisions. (Was there still a Kicked in the Bellies group at this time?). The cession agreement apparently favored the interests of the Mountain Crow. Was the breach between the divisions a new development created by the pressures for land cession or was it a long-standing feature of Crow political relations? Finally, it is difficult to understand the roles played by young bilinguals without more explanation of their relations with others, for example, with clan fathers. Were these young men solely interpreting or were they spokesmen, and if spokesmen, whose views were they representing? In short, if indeed the 1899 cession represented a turn toward political unification on the part of the Mountain Crow, an important question still to be answered is how was the necessary social reorganization accomplished?

For want of space I will not discuss the analysis of the 1906-7 Helen Grey incident, but rather comment briefly on the 1920s era. The emergence in the middle 1920s of a "general council form of government" is very significant, for such a development occurs much later on many, if not all, other Plains reservations. Was it the expectation of receiving tribal income in per capita

payments to individuals that led to this change or were there other factors, perhaps of longer duration? And, what kind of relationship developed between the business committee and the general council? What Fred Hoxie may be arguing is that there was an evolution of a polity based on band unity, to one based on tribal divisions, to one based on interest groups of uncertain or fluctuating composition. To show in historical detail the social and cultural mechanisms of such a transformation and how the change was related to encapsulation in the wider political system (encapsulation in the form of the reservation system) would be an important contribution to the study of Plains political history.

There are two other important issues in this paper. First, the concept of "tribal autonomy" needs to be clarified. It is not clear to me how the Crow community in the 1930s could be "obedient to, but unrestrained by, externally imposed rules and regulations." In point of fact, was it that they had begun to view the trust relationship between the federal government and the Crow tribe as necessary, that "complete independence" meant their destruction? This needs to be clarified. Other tribes certainly viewed the IRA proposals as a threat to federal protection, for example, to retention of land.

How political life gave expression to and was shaped by the persistence of a distinct (though not unchanging) Crow identity needs to be explored more fully. The study of Crow identity must include a consideration of clans and of status competition. And, to return to the argument Fred makes about the necessity of recognizing that there were contrasting viewpoints among the Crow, how did the existence of variant Crow perspectives on what it meant to be Crow influence political reorganization? Of course, all the questions I have raised could not be dealt with in one short paper. My central point has been that change in local-level politics is produced by local political traditions in interplay with externally imposed relations and conditions. To understand this process, the changes in local political tradition over time have to be fully explored.

The early reservation era is particularly interesting because the events of the first half of the twentieth century shaped contemporary Plains reservation politics. Crow leaders' "progressive" strategy, the development of interest groups, and the emergence of majority-rule or general council government at Crow reservation had parallels on other reservations. (There are parallels in Creek history, although the Creeks encountered these developments a century earlier.) Modern politics is in many ways a product of these trends, which have had an increasingly significant impact on leaders' effectiveness in negotiating with federal and other officials and which were encouraged or established on the Plains at the time of the Indian Reorganization Act.

Subsequent to the Indian Reorganization Act of 1934 and its Oklahoma equivalent, the Thomas-Rogers or Oklahoma Indian Welfare Act, there was the expectation that elected tribal leaders would gain wider powers and increased authority. This was true whether or not particular tribes accepted the provisions of the act. Elected leaders began receiving per diem for their work on behalf of the tribe and began to assume more economic responsibilities. Specifically, they could select individuals for particular kinds of jobs or programs. The Indian Reorganization Act also encouraged constitutional government. These IRA constitutions gave individuals or minorities a formal means to challenge tribal leaders. At the same time that tribal governments were undergoing this period of reorganization, tribes were finally meeting with success in their claims against the federal government for treaty violations. One

result of these claims was a new kind of relationship between the individual and the tribe. These events in the 1930s bear on local politics today, and contribute to problems leaders face in the struggle for "autonomy" or "sovereignty."

One ongoing problem of intermediary leadership has been the expectation on the part of constituents that leaders would contribute to the support of their followers. How the "provider" role changed at Crow and on other reservations prior to and subsequent to the IRA is important to an understanding of political history. In the early years of reservation life, leaders tried to convince federal authorities to give them some control over the distribution of food, goods, and jobs. At the same time, they had to convince their constituents that they were making a fair and generous distribution, even to the point of personal sacrifice. They often managed to secure a measure of control over distribution of treaty annuities and extra rations; they often selected agency employees and supervised work on communal gardens and fields. As delegates to Washington, D.C. where they negotiated with officials, they were advocates for their communities. They sought greater control over resources and assets. When successful they returned with tangible proof of their success in the form of a per capita payment from tribal funds or a commitment on the part of the government to buy cattle or a mill or heavy equipment for the tribe or tribal members. They then were expected to make a distribution that their constituents perceived as just.

In the 1930s, elected business councils were already in place on most Plains reservations, but in the post-IRA era they gained more control over the hiring of agency employees and over tribal funds. These councils also worked to obtain more access to federal funds. Leaders were expected literally to provide for constituents. The War on Poverty programs of the late 1960s and 1970s and the programs that survived into the 1980s offered new opportunities to make distributions to constituents. The programs also led to challenges to leaders' authority.

The federal government specified that these programs were to be administered by tribal governments, and the programs provided for salaries and travel expenses for elected tribal representatives. Previously, leaders had received a few dollars per diem for attending meetings. They often traveled to Washington on funds voluntarily contributed by constituents or at their own expense. Thus, the leaders who received income and expense money from the federal programs often were perceived by constituents as "only helping themselves." The salaries, large by local standards, and the travel funds of the programs in the 1970s and 1980s raised misgivings about the legitimacy of these leaders' actions. Moreover, after the IRA, elected tribal leaders had increasingly become involved in selecting employees; usually there were too few jobs. Disappointed applicants came to view elected leaders as poor "providers." The Self-Determination Act of 1975 allowed for contracting of programs by elected officials. Although this was a step in the direction of increased self-determination in the minds of many, locally constituents often viewed contracting with alarm. There is ample historical precedent for the expectation that the demonstration of competence precipitates the withdrawal of federal protection and assistance. Moreover, when contracts are awarded to tribes, the level of funding frequently falls below that previously received when the BIA operated the programs. Thus services actually may be cut back. In short, generous provision is linked with political authority in the minds of most constituents in Plains communities. The constraints imposed on tribal leaders by the federal government and the procedures they must try to follow in administering

programs, all bear on leaders' ability to mobilize support for their negotiations on behalf of the tribe.

Participation of the general population in decision-making began at Crow in the 1920s and became increasingly important afterwards. Decision-making by majority-vote usually was a feature of the "General Council," and it altered the political process in fundamental ways, for it made it possible for individuals with little prestige or influence in the community to play a major role in decision-making. The organization of a General Council sometimes created tension between constituents and elected tribal officials. Before the IRA, at least at Wind River reservation in Wyoming, Fort Belknap in Montana, and in Cheyenne-Arapaho country in Oklahoma (the communities I am most familiar with), decisions were made by consensus in group meetings. People of influence would work to persuade others, until those who might have other views ceased to pursue them. The majority-vote concept and practice was introduced into tribal politics in the three aforementioned communities during the post-IRA era. As a result, while tribal officials might view themselves as representing the tribe, the General Council, which consisted of all the adult members of the community, might see itself as the "Tribe," as having greater authority than the elected representatives.

At Wind River, General Council meetings usually operate by principles of consensus. But in particularly sensitive matters the meeting may adjourn in order to vote by secret ballot. In Oklahoma the General Council's decisions are made by majority vote but balloting is public, so the consensus process is at work there also; however, secret balloting is resorted to more often than at Wind River. In Oklahoma a struggle frequently arises over the budgeting of tribal income, over, for example, whether income should be distributed in per capita payments or used for economic development or services. In Oklahoma, one of the goals of the Cheyenne-Arapaho is to recover Fort Reno, a military reserve ceded to the government in the nineteenth century and, in the view of tribal officials and constituents alike, due to be returned to tribal ownership now that the War Department no longer uses the fort. While tribal officials have struggled to commit income to pursuing the Cheyenne-Arapaho claim for the recovery of Fort Reno, groups of constituents have fought for per capita distribution.

Constitutions are another focal point of the tension between tribal government and constituency. Generally these constitutions were written by Bureau of Indian Affairs personnel with little interest in or sympathy for tribal perspectives on political and legal relations. Constitutions and by-laws that suited the Bureau were imposed on the tribes. Most of the constitutions enable small minorities to participate in tribal government by repeated recalls and referendums and by election protests.

Although a constitution was not adopted at Crow reservation, Crows are aware of the use of recall and referendum on other reservations, and there are frequent appeals to federal officials by individuals or small groups to intervene in elections and other local affairs. Recourse to these kinds of appeals, which became more prevalent after the 1930s, has influenced the way intermediary leaders and their constituents deal with and perceive each other. The Arapaho in Wyoming, who rejected the IRA, have informal checks and balances on business council powers. Removal of a councilman is rare and requires a broad consensus. In Oklahoma, where the Cheyenne-Arapaho have a combined elected business committee, the Cheyenne-Arapaho constitution requires no grounds for recall, merely the signature of thirty percent of the voters in a particular

district. In one Arapaho district of 250 voters, this thirty percent has in effect been one particular extended family. In several disputes over the past few years they have used the recall and virtually brought the Cheyenne-Arapaho government to, if not a standstill, a slowdown. This has frustrated the business committee's efforts to wrest control over the community's resources and programs from the federal and state authorities. Revising or abolishing these constitutions is very difficult. Sometimes such efforts are perceived by many as a step toward termination of federal protection and services.

During the past ten years, there have been a series of lawsuits brought by small groups of Cheyenne-Arapaho constituents and aired in federal or CFR court (a court established by the BIA). Constituents armed with the Cheyenne-Arapaho constitution sued to prevent the tribal leaders from contracting to operate the local federal boarding school. Small groups sued to block elected tribal leaders from using tribal funds or receiving salaries from indirect costs in federal grants without explicit consent from the Cheyenne-Arapaho General Council. These lawsuits have paralyzed tribal government for weeks at a time, undermining efforts to pursue claims against the federal government or various jurisdictional disputes. Legal expenses have drained the treasury as tribal income goes to pay costs incurred by elected leaders in defending themselves against the constituents' lawsuits. The disputes eventually led to the recent establishment of a Tribal Court and legal codes that replaced the CFR court and that may help clarify the respective powers of the elected officials and the General Council, as well as the rights of individuals.

About the time tribal governments were being reorganized in the 1930s in Plains communities, the tribes' claims against the government for treaty violations were being pursued. Successful judgments generally were distributed in per capita payments. Such distributions provided desperately needed income in an era when subsistence economies were being replaced by participation in the market system. Per capita payments were compatible with the assimilationist policy of the federal government--that is, the division of tribal land and assets among individual tribal members. A new concept evolved: the individual as the owner of a proportionate share in tribal assets. This precedent subsequently had significant political implications for tribal governments. One repercussion was the development of controversies over legal criteria of enrollment, over who has a right to a share of tribal income and assets. Prior to these per capita distributions, tribal membership was based on cultural identity--on one's acknowledged participation in tribal society. As a precondition to per capita payments, however, the federal government insisted on criteria based on blood percentage.

Recent political history at Wind River, Fort Belknap, and in Cheyenne-Arapaho country has involved struggle between individuals to gain legal enrollment status despite their inability to meet membership criteria set by the tribal government. Sometimes federal officials supported the tribal government on this issue. Other times tribal criteria are set aside, as at Fort Belknap in recent years when Congress overruled the Gros Ventre tribe's effort to revise enrollment criteria. Currently, at Wind River there is a struggle between, on the one hand, elected tribal officials and allied ritual authorities, and, on the other, a group of women attempting to enroll their children fathered by non-Arapahos. This conflict spilled over into two recent business council elections and resulted in unprecedented turnover and in setbacks in the tribe's efforts to negotiate jurisdiction questions with state authorities.

In response to politico-economic encapsulation, Indians have often (although not always) tried to influence federal policy by presenting themselves and their constituents as "progressive." They tried to demonstrate a commitment to agriculture, formal education, and so on. Yet, this strategy is a double-edged sword. Creeks adopted Anglo-American political and legal institutions, albeit with modifications that reflected native perspectives and social organization. Yet, in the face of American expansion, their government was characterized as backward and was abolished. The Crow also attempted to influence federal policies by overtly demonstrating a commitment to "progress." But, ultimately, it was capitulation the government expected of Plenty Coos and the others, not progress. If the community is too slow to progress, they risk intervention. If they are too capable, too successful, too competitive with neighboring non-Indians, there is the threat of the withdrawal of federal protection and assistance. Today, leaders at Wind River struggle to obtain reservation services from Fremont County and the state of Wyoming, services to which they are entitled as citizens. Oil is produced on Wind River, and as a result each tribal member receives a monthly per capita payment, his share of income from tribal resources. Most taxes paid by oil companies on income produced on the reservation go to the state and county; most of the money is channeled to non-Indian communities while reservation residents go without. Tribal leaders have protested, but state and local officials counter that the "rich Indians" of Wind River can afford to provide their own services. This, despite the fact that the per capita income is one-third that of the state of Wyoming.

Local-level politics in the past and present involves two interrelated processes--local political tradition and the constraints and opportunities of encapsulation in the wider political system. Both Fred Hoxie and Sidney Harring have pointed to the importance of viewing political change, not in terms of "culture loss," but rather as adaptations based on native understanding and relationships yet also based on the struggle to contend with subordination within the national political economy. In the past, as well as today, local-level politics involved more than defending "autonomy" or "sovereignty" in the face of an impinging, hostile wider society. Intermediary leaders struggled, and sometimes failed, to convince their constituency of the merits of their strategies and the validity of their authority. Today, for constituents, the issue of "tribal" autonomy or sovereignty involves not only jurisdictional matters in relation to state and federal government, but also issues such as the interpretation of constitutions, the implementation of checks and balances in tribal government, and the development of legal mechanisms for the protection of individual rights. The quest for autonomy encompasses more than negotiations and confrontations with the wider society. Leaders and their constituents also are struggling to define or redefine legitimate intermediary leadership, and they are debating the meaning of tribal autonomy and sovereignty within the local context.

## NOTES

1. See Marc J. Swartz, ed., Local-Level Politics: Social and Cultural Perspectives (Chicago: Aldine, 1968), p. 1 on the concept of "local-level politics."
2. See, for example, Loretta Fowler, Arapahoe Politics, 1851-1978: Symbols in Crises of Authority (Lincoln: University of Nebraska, 1982), and Raymond J. DeMallie and Douglas R. Parks, Sioux Indian Religion (Norman: University of Oklahoma Press, 1987).
3. Angie Debo, The Road to Disappearance (Norman: University of Oklahoma, 1941), pp. 87-89.
4. Ibid., pp. 182, 185.
5. See, for example, Lucien M. Hanks and Jane Richardson Hanks, Tribe Under Trust (Toronto: University of Toronto, 1950), and Loretta Fowler, Shared Symbols, Contested Meanings: Gros Ventre Culture and History, 1778-1984 (Ithaca: Cornell University Press, 1987), pp. 61-65.
6. Fred W. Voget, The Shoshoni-Crow Sun Dance (Norman: University of Oklahoma, 1984).

## COMMENTS

JAMES SCHLENDER

Great Lakes Indian Fish And Wild Life Commission

Aneen. I am a Chippewa and a lawyer and a politician. Everyone who spoke before me had written remarks citing their books. I sat there thinking, I do not have a book of my own. But the more I thought, the more I realized that I do have one book finished and another one in the works. These are the payment books on my cars. That makes me eligible to talk here.

I graduated law school in 1978 and went to work for the Lac Courte Oreilles (LCO) tribe of Wisconsin. I was tribal attorney for 3 years, then I was on the tribal council, and now I am the Executive Administrator for the Great Lakes Indian Fish And Wild Life Commission (GLIFWL). I have been employed at the commission since 1986 and I still am so I can talk about LCO and the Great Lakes Commission.

LCO went under the IRA in 1936, and struggled along for 30 years. We adopted a constitution in 1966 at the behest of the BIA, also to get HUD Housing and to become eligible for OEO. It was a BIA style constitution "to play in the civic sandbox" according to Peter MacDonald, embattled Navajo chairman. LCO had been previously governed by a Business Committee, an era characterized by people who got elected to the council and met in a room to decide their committee assignments. Mostly losers were elected.

After that came a revitalization under Red Power, moving on the heels of Black Power in the 1970s. In 1971, LCO took up a long standing claim against the Federal Power Act which allows a dam to be built flooding 525 acres of the reservation and taking away 25,000 pounds of rice (now worth \$8/lb) annually. This greatly changed the life of our people. The license came up for renewal in 1971 and tribal members occupied Winter Dam. In 1973, 2 members went 100 yards off the reservation, cut a hole in the ice, and speared muskies and wall-eyes. This was a test of the off reservation exercise of treaty rights. In 1975, Lac Courte Oreilles took its children out of the Hayward school system and created its own schools.

In later years, this was known as the heroic era of young turks. During the 1970s and 1980s, these activists ran for tribal council and got elected. Under OEO, all you had to do was write grants and you got money. The tribe became a beneficiary of the War On Poverty, but we had no system of accountability for contractual obligations. We ended up \$450,000 in debt. LCO asked and got 20% of our claims money for past treaty obligations to pay off the debt. They young turks began negotiations with Northern State Power company over the lease at Winter Dam and got 4500 acres added to the land base. For the 1980s this was a great accomplishment since they are not making reservations any more. LCO also got 1/4 million dollars as a cash payment and other benefits from the hydro plant have accrued to the tribe. The final settlement was not easy. Since 1925, the leadership had known only denial. Overall the settlement was worth over \$3,000,00. To achieve it, various factions had to be blended and the leaders had to bring the people along. Everyone had to understand the process and get beyond notions of "sell out."

In the 1980s, the tribe started its own shopping mall. It built a roller rink that has since been turned into a bingo hall, generating a handsome income. LCO started a 100,000 watt radio station, the only Indian owned one east of the Mississippi. The tribe also revitalized a 28 acre cranberry marsh.

The young turk era saw the stabilization and depoliticization of the reservation administration. The policy was instituted that anyone could work for the tribe as long as they did the job. The results were so successful that LCO received national recognition and a representative sat on the Presidential Commission on Indian Economies -- even though this was not that laudatory a commission.

I mention these events not to pat our backs, but to show the history of tribal dynamics. Later on Bingo became the issue. The payouts were so small that some members asked, as usual, "Where's the money?" Leaders were emphasizing quality work, while also deemphasizing tribal members' priorities. If you did the job, you could have it, regardless of your identity.

Political factions strongly reemerged, showing the need for a party system. The young turks moved on. The elected council achieved a balance or 3/3 with the pivotal swing vote held by an elder statesman who was generally respected and accepted. When he moved on, factionalism arose. This was the outcome of the failure to sell the people on the importance of quality, cost accounting, and negotiations.

My other experience with political autonomy has involved intertribal politics in Wisconsin. The Red Cliff tribe had off reservation rights to fish in Lake Superior. Other tribes had them too. These rights were tested in the case of Wisconsin v. Girneau. The tribes banded together during the case and formed the Great Lakes Indian Fish Commission. Then the case of the 2 LCO members who went ice fishing in Chief Lake came up. This led the LCO v Voight, a major piece of litigation. In other fishing cases, the plaintiff was the US, not a specific tribe. The case went to appeal in 1983. In February of that year, LCO call together all of the inland tribes who were parties to the 1837 treaty and formed the Voight Intertribal Task Force with funding from the BIA to protect off reservation rights. But the BIA said they would only fund 1 organization, so Great Lakes and Voight merged in about 1984. The case is ongoing. Phase I handled the scope of the treaty right and Phase II, whose final arguments are being made even as I speak here, will set the scope of the state's regulation of these rights. This is the only case being led by a particular tribe. The response to US v Oregon was the Columbia River Intertribal Fish Commission, that to US v Washington (Boldt) was the Northwest Indian Fish Commission, and that to US v Michigan was the Chippewa-Ottawa Treaty Fishery Management Authority. Thus, Great Lakes is only 1 of 4 such organizations safeguarding off reservation treaty rights, in terms of a common right, derived from tribal membership, to a shared resource.

The BIA views Great Lakes as a collective trust responsibility. A tribe came not pull out and take a portion of the funds with it. Although tribes can manage to disagree, and do, all must work together to help conduct state-tribal negotiations for the interim exercise of treaty rights. The Voight Intertribal Task Force is now a committee of the Great Lakes Commission, still helping to negotiate an interim agreement until the judge finally rules.

Wisconsin's position is that the tribes should receive a "meaningful exercise of their rights," while the tribes want an "incremental exercise of their rights." Generally, the state wants the fit the tribes around the margins of the resources of the ceded territory. They want to limit the fish and deer to satisfy non-Indians because of the revenues they bring in. There are more non-resident license in Wisconsin than there are Indians.

In terms of intertribal dynamics, the commission can not bind the tribes; each council must ratify the agreement for itself, and adopt a code and ordinance for the tribe. Then Great Lakes will reinforce the code with its

wardens and generally adhere to the tribal lead. Non ratification by the tribe means it can still exercise its right, but it is subject to state regulations and its own treaty defenses. Most tribes have ratified, but those who have not also have not exercised their off reservation rights.

Despite the negotiations, the Attorney General of Wisconsin has been pushing for a final settlement through the collective negotiation with the 6 plaintiff tribes. There has been no progress, and, at the same time, great pressure on tribal leaders to keep members informed. The Media did not help. There was lots of attention to the sessions, but no reports were coming back. Many charged their leaders with "selling out." Meanwhile the media reported state plans to buyout the rights. This exacerbated the situation. The state has now started talking with Mole Lake Reservation about "leasing" their rights. I think its a case of "a rose by another other name" unless there is some benefit conferring certainty on the right.

While LCO was negotiating with Northern States Power, the leaders were very careful to bring the people along. This was truly and exercise in sovereignty who were kept informed about all of the discussions engaged in and told of their benefits.

This is the way to go. While the conclusions are not yet written in these cases, we can summarize the lessons to date with an analogy.

Leading a tribe is like pulling a weight with a rubber band. If you can overcome the inertia and pull the weight along, applying pressure to keep it moving, everything works well. If you fail to overcome the inertia, either the band will snap and your leadership flies off to wherever leaders go after they are snapped away from the tribe, or the weight flies forward and hits the leaders in the back and they have to respond to that.

That is the political autonomy of which I speak today.

## TRIBAL GOVERNMENTS AND THE STRUGGLE AGAINST TERMINATION

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Basically the philosophy of the termination policy introduced during the Eisenhower years of the 1950s threatened the federal-Indian trust relationship. This approach was not radically new, as previously other policies and legislative measures attempted to produce the same result. In bringing this relationship to an end, federal officials hoped to free government restrictions on Indian lands and properties, and to end expensive services to the Indian population. In the process, Indian Americans could be integrated into the mainstream as the federal government developed a relocation program to assist the Indians "in finding jobs and moving them to urban areas.

The history of pre-Eisenhower termination regarding Indian affairs has been demonstrated in multiple forms. Political movements to make all Indians citizens of the United States was one of several means which included numerous bills introduced in Congress. For example, the Indian Claims Commission Act of 1946 attempted to pay off Indians once and for all, thereby ending Indian protests and claims of "land stealing." Other forms of termination involved blatant military action, for instance, following the ruthless "Trail of Tears" forced removal of Indians from the East, decreased large portions of tribal population and negated traditional homelands and properties. Actually many frontiersmen wished to end the Indian race. The official policy of termination came about during the Eisenhower years as a result of World War II and the criticized failure of the Indian Reorganization policy of Indian Commissioner John Collier. The actual wording of termination as introduced in the eighty-third congress in 1953-54 is in House Concurrent Resolution 108. The following is the resolution:

Whereas it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, and to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens.

The legislation of termination came about when a certain bloc of congressmen quietly pushed the measure through congress. Primarily from western states containing reservation lands, these individuals, surprisingly few in number, convinced the rest of their colleagues that termination would reform Indian livelihood. Senator Arthur V. Watkins of Utah, Senator Patrick McCarran of Nevada, and Representative E.Y. Berry of South Dakota led this movement in congress and the resolution was approved in July, 1953.

Scheduled tribes for termination included the Menominee of Wisconsin, Klamath of Oregon, Alabama-Coushatta of Texas, Flathead of Montana, Potawatomi of Kansas and Nebraska, Turtle Mountain Chippewa in North Dakota, Mixed-blood Utes, and a group of about forty small tribes on western Oregon.

Initially congress listed the Osage of Oklahoma as well. During the summer of 1953, the Muskogee area office reported that termination programs would be developed for the Five Civilized Tribes, some Indians of the Quapaw Agency, Seminoles of Florida, and the Mississippi Choctaws. Furthermore, government officials planned withdrawal programs affecting the Coushattas, and Chitimacha groups in Louisiana, the Cherokees on the Kenwood Reservation, and the Thlpothlocco Creek tribal town in Oklahoma. The first example of the termination experiment involved the Menominees of Wisconsin. How it was introduced to them and how they reacted provides an immediate understanding of the interacting politics involving government officials and tribal officials and the tribal membership. Below this political level is the cultural confusion, tribal factionalism, and familial destruction that termination unfortunately caused.

Typically government officials presented termination to tribal groups for their approval. Democratically, a tribal leader called the general council of the tribal membership together to vote to approve or disapprove of the termination issue. Participation of the membership was most important at this stage. Theoretically federal officials had to obtain "consent" from the tribal groups. However, officials pressured Indian leaders or were successful in manipulating those members present at the voting to approve termination. In the case of the Peoria of Oklahoma, both strategies worked.

In retrospect the most controversial case of termination involved the Menominee. A federal delegation of Indian Bureau officials, a Wisconsin congressman, and an attorney presented the idea of termination to the Menominees. The tribal membership was called to meet by tribal leadership and in the process, the officials began to talk about a per capita payment due the tribe of \$1,500 each. The explanation confused some of the Menominees and some believed that they were voting to receive the per capita payment, others thought that termination had to occur first before receiving the payment, and others were confused about the entire issue. Furthermore, the members present represented a small portion of the Menominees. In the outcome, the federal officials accepted this general approval as the acceptance of termination as later passed as Public Law 399 in congress.

The Menominees represented one of the more advanced tribes in terms of economic resources, i.e., their rich timberlands. But by confusion, and certainly the language barrier presented a problem, bureaucratic jargon was included as well - the Menominees were manipulated. Misrepresenting the entire tribal population, only a portion of members attended the termination hearings and the voting as revealed by council minutes.

Like the Menominee, the Klamath of Oregon held rich timber areas, and federal officials induced them into approving an even larger amount of money for approving termination. In this case, the sum of \$48,000 was encouraged in exchange for termination status of Klamath timberlands. The Klamath situation became complicated when state economy interests, conservationists for the natural habitat for wildlife, and lumber companies became involved. Primarily, they wanted to know how the selling of Klamath timberlands following termination would affect their separate interests. In the end, Klamath termination affected the economy of the Klamath Basin, but less effected conservation interests as government limitations regulated the harvest of timber-sold lands.

Unlike the Menominee and Klamath, the Osage of Oklahoma successfully fought termination. Small in membership, they were more unified and viewed

termination as a threat in the beginning. Unable to obtain consent, they were marked off from the agenda for tribal groups to be terminated.

A similar small group did not succeed in confronting termination. The Chippewas of Turtle Mountain Reservation in North Dakota adamantly opposed termination. During October, 1953, eleven tribal members signed a petition and sent it to the House of Representatives, the Senate, and the Secretary of the Interior without positive results in their favor. One of the Chippewa women stated, "We can't make it without the federal government, a few of us have made it maybe, but not whole tribes."

Two criteria had to be met for tribal groups to have a change against termination. Unification against termination and sufficient membership representation. Federal officials were able to fragment the members into factions, or they withheld information or other less vital information was emphasized to convince tribal groups to vote for termination. The easiest prey was a tribal group who lacked a large membership and had a weak leadership which could not withstand the pressure exerted by terminationists.

Regarding human concerns, termination aroused the personal feelings of both Indians affected and non-Indians who protested its wrongs. A few supportive groups like the Association On American Indian Affairs (AAIA) opposed all termination bills in congress. AAIA President Oliver La Farge, however, warned the tribes to be careful if they hoped to gain public support. On the other side, bureaucrats argued it was well beyond time to end the federal trust relationship with tribes.

From 1945 to 1960 the federal government terminated 109 cases of federal "withdrawal" of trust status affecting 1,369,000 acres of Indian land and approximately 12,000 Indians. To encourage Indians to leave terminated reservations and communities, the relocation program accounted for about half of the Indian population living in urban areas. This two-fold policy undermined the tribal governments as many of their tribespeople left, causing multiple repercussions.

Although termination and relocation left approximately one half of the tribal populations, this caused a shortage of human resources within tribal communities. Kinship systems were disturbed, tribal populations were depleted, fewer competent leaders were available, and the issue of termination caused strife within the communities. Most of all, people remaining in the communities were ill prepared for post-termination.

In retrospect, George Pierre, former leader of the Colville Confederated Tribes of Washington stated that "the word termination was spreading like a prairie fire or a pestilence through the Indian country. It stirred conflicting reactions among my people; to some it meant the severing of ties already loose and ineffective; others welcomed it as a promise of early sharing in tribal patrimony. Many outsiders realized that it provided a first step towards acquiring Indian resources.

Generally termination provoked fear, paranoia, a growing anger, and the negative experience taught the tribes to be aware of new policy ideas issued by the federal government. In response the struggling tribal governments utilized the economic assistance programs of the Kennedy and Johnson administrations to rebuild their communities upon realizing that federal Indian policy swung in their favor during the 1960s.

The following decade of the 1960s demonstrated an angry Indian response to the actions of termination from the Eisenhower years. The Indian response to termination imbued from individuals and from tribes as well developed into a

general Indian opposition to future termination designs from the federal government. Following the enactment of the Indian Civil Rights Act of 1968, Apache leader Wendell Chino said that congress needed to repudiate the termination policy once and for all, and then pronounce a new policy. "A new policy statement will remove all psychological impediments that stifle development of Indian tribes," said Chino.

Overall, termination is such a word that implies final meaning - the end of all. Indian people have been politically and emotionally moved by termination as they perceive it as a dangerous threat to themselves. It endangers their political status as tribes, cultural continuity, their communities, and their own families' well being.

The political status of Indian groups experienced the greatest impact of termination. This status was important in the tribes relationship with the United States government. As this relationship increasingly strained following termination, it affected two concerns: sovereignty and tribal autonomy.

Sovereignty for Indian groups following termination suffered a crucial setback. The ability of congress to shape the political future of Indian groups via its "plenary power" critically limited Indian sovereignty. Tribal sovereignty came under conclusive attack during the termination years. For more than 125 years, this sovereign status ad been steadily eroded via legal interpretations in court cases and by congressional legislation. The government viewed tribal sovereignty as a deterrent to Indian progress as Americans, and that such sovereignty was no longer viable if Indian livelihood was to improve.

In the Indians' view, their autonomy has in fact survived termination and its imposed limitation of sovereignty. Politically limited, Indian groups have in contemporary times been able to establish solvent economic bases with a profound effect on advancing their political autonomy. From their economic positions, the tribes have been better able to finance the operations of their tribal governments. Police networks, tribal courts, and codes of tribal laws have benefitted from economic improvements as well. In turn, this advancement has enabled the tribes to hire judges, police personnel, purchase equipment and legal materials for establishing law and order systems. Both Indian trust lands and Indian reservations have been affected by this development. However, the new political status resulting from termination has affected the trust lands and reservations differently, primarily because of their geographical differences.

Trust lands, which are small collected areas of tribal lands without reservation status, are being developed by tribal governments. Two examples are the Muscogee Creeks and Sac & Fox of Oklahoma. As they continue to grow, law and order must be maintained and therefore the political status must be determined as well. The ultimate responsibility falls within the authority of the Secretary of the Interior as these developments remain under trust status.

Reservation lands best exemplify the exercise of tribal autonomy when tribal governments exercise self-rule. This set of conditions permits the tribal governments which have a larger land base to operate more successfully, although this also entails greater responsibility. Specially the Menominees today are furthering their own political autonomy from an established government promoting economic improvements. With industrial development evident on the reservation, they are establishing solid economic bases to reinforce their governmental structures.

Self-termination could likely become the results of economic independence as the tribes also strive for more autonomy, and they would decide that trust status is no longer to their advantage. Undoubtedly, economic improvement and autonomy are linked together as tribal communities attempt to stabilize their governments and advance them towards politically autonomous units.

Tribal governments have developed in stages in recent history since the Indian Reorganization Act of 1934. Before attempting to explain governmental development, it is important to briefly identify fundamental values of tribal communities which established the foundation of unity for a government to govern. At the stage of community existence, a law and order system maintains the community, and might be called the initial stage of government. Under a leadership of one individual or an advising council at the minimum, the tribal community designs a set of tribal laws to avoid crimes from being committed. This form of traditional government was dismantled by federal Indian policies until the Indian Reorganization Act attempted to restore tribal governments, but according to federal guidelines.

From the Indian New Deal years of the 1930s until the termination years of the Eisenhower years, tribal governments were allowed to develop. Having survived termination, tribal governments have been able to flourish although they have been limited by federal intervention in terms of assistance, court cases, legislation, and policy mandates. The Indian Civil Rights Act of 1968 is one example of federal guidelines establishing limits on the governing rights of tribal government; "Santa Clara Pueblo v. Martinez," (1978) is a case which supports tribal self-determination, but the American court system interpreted the law, and informed the Santa Clara Pueblo government what its governing rights were, and the Indian Self-Determination and Educational Assistance Act have limited and shaped tribal governments as they strive to develop according to their people's needs. In the process such development towards self-rule has been a political confrontation over sovereignty between tribal leadership and paternalistic control of the government. On one extreme is total tribal sovereignty and the opposite end of the spectrum is successful termination, (which are both theoretically possible), but the conflict will likely continue.

As tribal communities and their governments survived termination in the 1950s and early 1960s, they endured a transitional change in leadership. Tribal leaders of past traditions encountered difficulty in administering to their people's needs, especially when a new educated Indian generation began to unconsciously challenge them. To compound the problem, almost half of the Indian population lived in urban areas, primarily due to the relocation program. Indian urbanization produced educated individuals who sought to help their tribespeople and threatened the traditional leadership systems on the reservations. With cultural gaps and generation gaps resulting among the tribal communities, a new genre of young "Indian" leaders emerged who identified more with Indian causes rather than tribal issues.

Red Power was in vogue as a type of pan-Indian opposition to discrimination from the white mainstream based on civil rights, and especially treaty rights being disregarded by the federal government. Young angry Indian youth formed the American Indian Movement (AIM) in Minneapolis in 1968. This group led militant takeovers and occupations of federal properties, buildings, and the seizing of Wounded Knee, South Dakota in 1973. This adventuresome series of demonstrations provoked a new leadership in tribal governments which was less traditional in that they imitated and adopted more mainstream business methods in regulating their governments.

The score of years from the 1950s through the 1970s has established two substantial concepts in federal-tribal relations: termination and self-determination. In political theory, they represent the extreme opposites of federal-Indian policy. However, they sought the same objective of enabling Indian people to be integrated into the mainstream society. They focused on the individuality of Indian people as the federal government was convinced that Indians would leave their communities for life in urban areas. Theoretically, this transition represented a reform from reservation poverty to a "better life" awaiting them in cities. It should have worked; but it did not. The federal government also overestimated the social acceptance of the mainstream population to receive Indian people to live and work beside them.

In reality Indian people experienced difficulty living and working within mainstream America. Whether or not they wanted to assimilate remained an "issue for each individual to decide. This concern was less political than the political termination of tribal groups (communities) and termination of individual trust relations over property. Specifically, the federal government sought to terminate its Indian trust relationship at a socio-political level which would liberate the members of the tribes from political termination and social paternalism. In short, the reality was that the termination policy was a failure.

Due to frustration and especially Indian opposition, plus developing political movements for tribal restoration, (ironically termination began with the Menominees as the first case and they were the first restoration case), the federal government changed to a policy of self-determination in the 1970s. In theory the federal government has accepted the existence of tribal communities and intends for them to provide services for tribal members. However, by focusing on the tribal communities, the views of the people are overlooked as the federal government operates on a government to government basis with the tribes. It has not yet been proven whether this theory will work or not. It is important that the federal government has accepted that tribes have political autonomy, but to what degree remains debatable as various tribes hold varying amounts of political influence and the level of political autonomy which the federal government designates for Indians as a whole remains uncertain.

Sociologically, Indians found termination difficult to deal with, but initially they probably felt more at ease with self-determination. Most likely, as a whole they were more apprehensive about both policies. At the governmental level, the tribes rejected termination and like the Osage who successfully fought it, other groups feared that it threatened their livelihood. As Indian reaction transpired in the 1970s, termination became a racial issue. Trust terminated Indians felt uncomfortable living in the mainstream, nor did the mainstream socially accept them because of pre-conceived stereotypes and Indian maladjustment to that lifestyle, provoking further prejudice and discrimination.

Furthermore, Indian difficulty with termination caused social apprehension about self-determination. With jaundiced feelings, self-determination represented a "do it yourself" approach, as the common feeling was that, at some point, the federal government would suspend appropriations and assistance. Mainstream America, also sociologically viewed self-determination with apprehension that American Indians were "still getting a free ride" from the federal government and were funded by their tax dollars. Such a view reinforced prejudice towards Indians and their communities on the reservations and in the cities. Thus, tribal governments faced this obstacle of prejudice by developing their programs with vacuum created by the context of backlash.

Culturally, Indians were at odds with mainstream America. Both sides operated on different values and from different life patterns. In this light of fundamental differences, termination was doomed to fail and self-determination proved more acceptable. Based on cultural behavior, the tribal communities would naturally oppose termination, (unless they wanted to terminate their own trust relationships as did some individuals), and they would find self-determination acceptable if it was put into their cultural context and control. The latter is likely the key, as the federal government and tribal governments have experienced difficulty relating to each other culturally until the last several years. The thinking of tribal leaders and government officials differed due to their diverse cultural backgrounds, but as they are in increasing contact they are able to improve their understanding of the other even though they may disagree.

Philosophically, the basic views of tribal member and members of the mainstream differed during the termination years and remained basically incongruent when congress passed the self-determination act. Operating from separate cultural values and sociological differences as well, Indians and their communities found post-termination difficult to adjust to regarding trust lands. The termination policy was paternalistically designed for them, trying to convince them that they no longer needed their trust relationship with the federal government. Less paternalistic, self-determination seems more agreeable as it allows more control over their own lives. Even though self-determination involves imposed guidelines and the authority of the Secretary of the Interior remains over Indians, tribal governments can function more independently in a similar way as they formerly did.

On the other side, the federal government and mainstream society were philosophically supportive of termination as it would make Indians like mainstream members. Similarly, both non-Indian elements are supportive of self-determination, as they have accepted the co-existence preference of Indians as Americans. The plurality of America has been positive for both Indians and non-Indians as they progress according to their own preferred directions, but intervention into the affairs of either causes tensions and problems. The philosophical acceptance of Indians like other minorities has allowed Indians to progress on their own.

Historically, Indians and their communities viewed termination in the 1950s as a variation on the previous tactics by the federal government to undermine their existence. Historical relations have mostly been negative between Indians and whites, as their basic differences and the struggle for land have accounted for this ill-relationship.

Again, historical relations have made Indians skeptical of self-determination as another entrapment of the federal government to negate its responsibilities as stipulated in treaties. Because of the government's history as a paternalistic bureaucracy towards Indians and their communities, non-Indians have also viewed the government's Indian affairs negatively, but in a different light as a welfare agency which will continue to serve Indians.

Economically, the termination policy was incongruent with tribal approaches to economics. Because values were varied and certainly different from those of the mainstream, termination was enacted so that Indians could deal financially with the mainstream business world. This proved to be disastrous. At the individual level and tribal level, Indians found it difficult to compete successfully with business corporations as in the case of Menominee Enterprises Incorporated, and individual Indians suffered financially in poverty once relocated

to cities. Because of Indians adopting mainstream values in addition to their tribal ones, or even replacing Indian values, during the 1960s and 1970s, American Indians are more prepared to deal with self-determination. Very much aware of how businesses operate, in the 1980s, many Indian organizations and tribal governments are successfully competing in the business world.

Due to progress in economics, America's mainstream has found it easier to relate to Indians, their organizations and tribal governments. Interestingly, because the mainstream establishes the norm in how business is conducted. This disallows the mainstream from learning about Indian and specific tribal values, unless it deliberately sets out to do so.

A strong correlation exists between Indian economics and political autonomy. The self-determination policy approach of the federal government in its strategy of handling its relations with Indians is a wise one that it gives responsibility to the tribes themselves. Indian progress in economics and handling this responsibility are in the hands of Indian leadership.

The issue of how much political autonomy the tribes have currently along the spectrum between termination and self-determination is answerable perhaps best from an internal and external analysis of this complex situation.

Internally, the basic Indian values which led termination to fail, may very well cause self-determination to succeed. Certain elements like Indian leadership, family and kinship networks, philosophy, and belief systems are paramount to sustaining tribal communities and supporting self-determination in pursuit of political autonomy.

Externally, tribal communities are impacted by interests like the federal government itself, other federal agencies, the business sector, and state and local governments. Previously, the federal government had always attempted to change Indian communities as an external policy, especially via termination, or by legislation. In most cases, Indian communities were able to successfully resist as long as they retained basic aspects of their traditional existence. Unlike termination which the tribes viewed as negative, self-determination is not presently viewed as an external political or policy control. Interestingly, the federal government has relinquished administration of tribal affairs to the tribes, an important step towards developing political autonomy. Yet, the government retains its responsibility to the tribes.

First, self-determination is an ambiguous policy and concept for both the federal government and for Indian communities, although both can find it acceptable. An important consideration is the factor of control of the policy. If in the hands of Indian communities and their governments, then autonomy becomes more realistic whereas termination was not controlled by the tribes, (although they had to vote to accept it). On the other hand, self-determination is limited by federal guidelines which would limit autonomy. However, tribal communities are able to use self-determination in its limited capacity until they are able to become more politically solvent. This step is critical towards achieving greater political autonomy.

The decade of the 1980s represents a second new generation of tribal leaders who are sophisticated, joining the ranks of the surviving tribal leaders from the 1960s and 1970s. This amalgamation of Indian leadership is one which has learned who to protect tribal interests via shrewd dealing with the federal government, energy companies, and other tribes. It is very politicized in the mainstream, as well as in tribal politics. In some instances, tribal leaders have to work in the best interests of the people against treats like contemporary forms of termination in spite lack of support. In commenting on the imposing of

excise taxes on future constructions and insuring a portion of jobs for Indian workers, President Alex Lunderman of the Rosebud Sioux said, "I'm a businessman, and I know how the game I played. I am pulling the tribe, kicking and clawing into the 20th century."

Currently termination of tribal autonomy is approaching a most critical development. Although tribal communities have been successful in surviving termination legislation and policies, and as they progress two important observations need to be made. Many tribal communities will likely earn economic independence and they could very well reject any form of federal control which may also include federal financial assistance. The signal for a re-emergence of termination will be the dissolution of the Bureau of Indian Affairs.

As the BIA is weakened and tribes become politically and economically stronger, the federal government will likely streamline the Indian Bureau again beginning with dissolving itself of federal responsibility for field services. This is already happening as the government is allowing tribal governments to contract for such services as educational scholarship monies and health services directly with the federal government. In addition, the federal government has closed Chilocco Indian school and others throughout the country as listed to be closed.

Economic growth affects the development of political autonomy under the self-determination policy. In developing a solid economic base to operate from, tribal governments can finance programs and establish legal systems for their communities. This would enable tribal communities to reach a point of achievement when they would no longer require federal appropriations and services. In a different light, self-determination is a form of self-termination. As the tribal communities become economically stronger, their political autonomy will increase as Indian groups establish their own definition of sovereignty.

## A NON-FLY IN AMBER: THE MODES OF TRIBAL GOVERNMENT

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My interest in this essay is to look at the history of Indian Tribes in the twenty-first century. I intend to examine the complex modes of modern tribal government as they relate to the future of tribal government.

I use the term "modes" in the context of this essay as a term of art to describe the roles that tribal governments must play in order to meet the demands placed upon tribes if they are to maintain their residual sovereignty in the federal system. Tribes are in the difficult position of having a unique right, self-government, that is safest when it is not used. As tribes demonstrated from the turn of the century to 1959, conformity to the general norms of society would probably best insure the continuance of legal self-government. Unfortunately, such a strategy may result in losing the very essence of what is valuable about self-government: the right to be different.

By most statistical measurements of the quality of life in the United States, Indians are at the bottom. Therefore, it would appear logical that any one of society's serious problems should be ahead of preserving a political status that has been blamed by some as the major cause of some of the very problems. Such a suggestion of the priority of self-government may appear particularly galling since the heart of self-government is government. Too often it is tribal government that takes the brunt of the blame for the failure of individual Indians to climb the social ladder. This assumes, of course, that progress up the social ladder is the goal of most Indians, an assumption made without much empirical evidence to support it. The charges against tribes and tribal governments range from depicting them as socialist preserves that intentionally keep Indians in poverty to fascist regimes that ignore the most basic and fundamental individual civil rights. Tribes, tribal governments and Indians are routinely accused of mismanagement, corruption, slothfulness, ignorance, greed, arrogance, selfishness, and even lack of patriotism. A state court judge in one of the early Washington State fishing cases, refused to recognize treaty fishing rights on the grounds that the American Revolution was fought to allow all men to be equal and to permit Indians their treaty rights would be creating a "new nobility" which was, in his mind, the penultimate heresy. He opined that the Puyallup Tribe was no different than the Sons and Daughters of Norway.

While few people get the opportunity to express their opinions as openly as a judge in an opinion, his notion of Indians is reflective of many people's view of Indians. The view that Indians are privileged people in society and are an offense to notions of equality. It is because of this fundamental misunderstanding about tribes and sovereignty that requires Indians to make the preservation of sovereignty the first priority in modern policy. For without sovereignty, which entails the right to be different, even if being different is in a tin-roofed shack, a dirt-floored hogan or an overpriced trailer, all is lost. The right to choose to be different is the one thing that Indians have that is priceless. Freedom of choice is the thing that is envied.

The one essential criterion that defines an Indian is tribal citizenship. Citizenship is the foundation upon which Indians must build if they want to improve their lives as measured by the statistics or maintain their present

culture. Tribal citizenship, in both its political and cultural guises, is the source of much of the confusion among non-Indians as to the precise nature of Indian legal rights.

Perhaps one of the major reasons that tribes have not made the progress expected by the non-Indian world is the almost complete ignorance of tribal government, including ignorance of its complexity and of its obligations. Even if one assumes good faith on behalf of the United States, it is still not surprising that out of ignorance, projects are underfunded, short term goals are rampant, and monies are sought for anything available rather than money spent on the needs as perceived by the tribe. Trying to define the complexity of tribal government by defining its role in modes is a first step in planning a strategy for the future; a strategy that has at its heart the right of tribes to make real decisions about their future.

The modes or roles of tribal government often intersect and clash. Each mode is driven by different constituents and in many tribes it is the same people who act in different modes, as these variables change tribal officials need to be aware of the new calculus. This forces different demands upon the participants and the tribe.

The resurrection of federal Indian law in 1959 resulted in tribal government becoming the focal point of much of modern federal Indian policy. The government is the contact point between the citizens of the tribe and the outside world. Therefore, it is incumbent to try and understand the complexities of tribal government in order to form a modern Indian policy.

There are over 300 federally recognized Indian tribes. To discuss tribal government without acknowledging the diversity that the terms tribe and tribal government encompass would make the discussion meaningless. However, there are common threads that run throughout the Indian law and policy tapestry. These threads create a "common denominator" that gives each judicial and administrative decision potential impact far beyond its immediate import. The result of this "common denominator" phenomenon is that decisions usually have application to more than one particular tribe. This phenomenon places a great burden on individual tribes to act responsibly in pursuing their individual goals, because every tribe has the potential of "betting the farm."

In the law, the best example of the impact of the wrong tribe bringing a major suit to the detriment of Indian sovereignty is Oliphant v. Suquamish Indian Tribe. The Supreme Court held that Indian tribes had lost criminal jurisdiction over non-Indians at the instant they became domestic dependent nations. This return to a political analysis of tribal power to remove tribal power was in harsh contrast with the legal analysis adopted by the courts after the Cherokee cases had established the principle that residual tribal power was settled and could only be changed by explicit legislation by the federal government under the United States' plenary power over Indians. The Oliphant case involved a tribe of fifty members on a reservation with three thousand non-Indians. In addition, the tribe and the Indians together owned very little of the reservation. The land tenure and the demographics may not have been the deciding factor in the minds of the justices. However, if the suit had involved the Navajo or Hopi Nations, many people believe the result would have been different. Regardless of what might have been, both the Navajo and the Hopi are bound by the ruling. Justice Rehnquist's use of political theory to justify the holding makes the possibility of reinstating criminal jurisdiction over non-Indians on the basis of residual sovereignty an almost impossible task. The irony of Oliphant is that it was the concerted, planned battle of the Navajo

Nation beginning in the late 1940's that culminated in the Supreme Court's recognition of residual tribal that allowed the Suquamish sovereignty in Williams v. Lee, that allowed the Suquamish tribe to exercise residual sovereignty over non-Indians in the first place. Similar examples can be found in policy decisions. Because of the diversity of Indian tribes, some of the tapestry's threads have greater meaning for some tribes than others. For general discussion purposes, one can generalize the potential importance or difficulty of a thread by creating a rough topology of tribes. I chose to use topology rather than typology because of the complex nature of modern Indian reservations. Once clear geographical definitions like Indian country are now multi-dimensional concepts and jurisdiction is at best a tangled web. Since topology has both a geographic and a mathematical meaning, it conveys to me at least the complex nature of the reservation and tribe combined. The classification of a tribe into one of nine topologies will help to define more clearly the nature of the mode of government that the tribe often has the most trouble with.

In constructing the topologies, the following criteria were considered. Obviously, additional criteria can be added, but with each addition the commonality of problems is attenuated.

#### Criteria For Topologies

**LAND BASE** - The civil and criminal jurisdiction of a tribe is not defined by title to the land. Title is only incidental to jurisdiction. A tribe may have jurisdiction over a very large geographical area but the majority of the land may belong to tribal members or even to non-Indians. As a further complication on this problem, a tribe may own the underlying mineral rights while the surface rights are held by individual Indians or non-Indians. A tribe with this type of ownership pattern will have different problems than a tribe that owns the land or, more properly, has the equitable interest in the land with the title residing in the United States. With the exception of the pueblos of New Mexico and isolated purchases of plots by tribes, this is the legal division of the ownership of trust land. A tribe may, of course, own non-trust land like any other entity, but that is comparatively rare and has little impact on government per se. Because of the distinction between tribal ownership and tribal jurisdiction, maps showing reservations can be very deceptive. Tribes with seemingly small land bases may have more tribal land and more development opportunities than one with a large jurisdictional base but very little tribal land.

**WEALTH** - This can be mineral, location, tribal enterprises, case or any other material good. One should distinguish between inchoate and choate wealth. A tribe could have a valuable mineral deposit but for any number of reasons does not wish to convert that property into cash. The wealth is inchoate. Today, coal is the classic example of inchoate tribal wealth. The world is awash with energy resources, and the United States has a surplus of electrical generating capacity so that a tribe that desires to develop its coal resources would have to either find a specialized market or undercut the existing price. Neither option is viable. This is in stark contrast to the perceived value of coal ten years ago when the common wisdom was that the price for coal would only rise, and some tribes made decisions based upon this expectation of converting inchoate wealth to cash when the price was right. In hindsight it is clear that the real tribal asset was not coal, but the ability to place the coal into the

stream of commerce much more quickly than either federal, state or privately owned coal. It was the power of the tribe to make rules more quickly that made Indian coal attractive. The time value of money with the right of self-government was a rare opportunity that one can only hope was a lesson learned in having professionals assist tribes in resource development. It is important to understand that I am not lobbying for development of coal resources or decrying the failure to develop, for that is the choice of the tribe. What is unfortunate is the basis upon which the decision was made. Ignorance cannot be tolerated.

A second problem is confusion over who owns the wealth. The "reservation" assets may not belong to the tribe, but could belong to the members as individuals or even non-Indians. Finally, more often than not, tribal assets tend to be overvalued and even when they are not, the failure to distinguish individual needs from governmental needs confuses the issue. It is critical to distinguish between private assets and public assets. The State of New Mexico may have large mineral assets but they belong to the state and whatever benefits flow to the citizens from those assets is a political and economic decision. Consequently, the benefits flow in different directions.

A tribal government has a moral obligation to ensure that the tribe continues. It must not only manage the assets that exist for the immediate term, but the tribe must also consider the future as real time. This is 180 degrees from the considerations that face most private individuals, where the future usually is no farther ahead than the economic survival of the spouse and the education of the children.

**POPULATION** - Felix Cohen once wrote that the hardest question in Indian law is, "Who is an Indian?" The question is hard because the answer is determined by three factors: who is asking; who is answering; and for what purpose is the question being asked. As a consequence, one may be an Indian for some purposes and not for others. A person could be a Indian for 4 tribal benefits but not be subject to the Major Crimes Act, or eligible for some federal services but not be for others. The definition of an Indian used by the Bureau of Indian Affairs to justify the budget is different from the definition of Indian that the Bureau uses to determine who is eligible to receive federal services. Such variations are not necessarily congruent with blood quantum. Individuals with 4/4 degree of Indian blood may not be an Indian for most, if not all, federal purposes and a person with 1/2056 degree of blood may be an Indian for many purposes. Since the issue is not just one of blood, but also of citizenship, tribal definitions as to membership become critical factors in the answer. The difficulty of the question comes into play for tribes in a myriad of ways. A tribe may have a very large population and yet many, if not most, of its members have relatively small degrees of Indian blood. Another tribe may have a large population with almost every person half or more Indian. One can obviously have the same situations for small tribes.

Closely connected to this issue is the resident population versus the non-resident population. Since the tribe is free to make its own laws as to who may participate in the governance of tribes including the franchise, some tribes allow only residents to vote while others allow all members to vote with every variation in-between. A tribe may require a greater degree of blood for holding office than for membership or requiring that an officeholder speak the native language or require that the blood be matrilineal or patrilineal of it may

exclude one sex from participation in some way. Each of these examples causes conflict when the tribal government operates in different modes.

**JURISDICTION** - While this essay is predicated on generic Indian law as the norm, some states have been given powers over tribes and members that differ considerably from the norm. The most notable modern example is Public Law 280 which granted a degree of criminal and civil jurisdiction to named states. But P.L. 280 is not the only jurisdictional law that reallocated jurisdiction between the United States and the states. For example, both New York and Kansas were the recipients of special criminal statutes granting them power over Indian reservations. Moreover, some treaties and statutes reallocated jurisdiction for particular tribes. Perhaps the most difficult area of fragmented jurisdiction is the situation that exists in Oklahoma and Alaska --Oklahoma because there are special statutes, treaties and case law that make almost every tribe unique from the norm, and Alaska because the full impact of the Alaskan Native Claims Settlement Act is unknown. The political status of native villages in Alaska is one of the great unsettled issues of Indian law.

**CULTURE** - Every society has culture. Culture in this context means an almost stereotypic view of Indians. Do they practice their native religions? Is the language still used by the tribe? Does the tribe appear to govern itself with traditional laws rather than codes adopted from some non-Indian model? Is the government a variation of what the members view as the "old" or "traditional" form of government? Given these factors, one can derive some rough topologies of Indian tribes.

#### TOPOLOGIES

1. Tribes with large tribally-owned land bases with a population that is primarily living on the reservation and has a high degree of Indian blood with a strong sense of tradition.
2. Tribes with many members but owning little tribal land and having few members living on the reservation. These tribes may control large jurisdictional areas but have little tribal property.
3. Tribes with few members and little land but a high degree of blood quantum and the majority living on the reservation with a strong sense of tradition.

Each one of these must be reconsidered with the following changes.

1. Tribes with special jurisdictional statutes that change the norm.
2. Tribes with wealth.
3. Poor tribes.

When the first three are combined with the second three, one gets at least nine separate topologies.

Any tribe can have aspects of more than one topology but the dominant characteristic will often distort the government itself. For example, a tribe that is poor with little actual or potential wealth is going to have to concentrate on trying to raise money to provide the most basic functions of government. This could result in many of the other important functions of

government being ignored completely. It can result in a downward spiral since money from federal sources may depend upon an already existing infrastructure. For example, poor tribes may lack the capacity to properly write grants or upgrade the delivery of human services if there is no service being delivered at all. As one can construct numerous scenarios for each situation and variations from each situation, one needs to examine the modes of government and how they interact within each topology.

## . Modes Of Government

The idea of modes of government is easier to understand if one examines the basic structure of the federal government. Under the Constitution of the United States, each of the three branches of government was given distinct responsibilities. Built into the exercise of assigned responsibilities were checks so that no one branch could ride roughshod over the other two. Much of the history of political debate in recent years has been over the efficiencies of the checks and balance system. In other words, has any one branch usurped too much power? As there appears to be no general agreement as to which branch has usurped too much power, if any has, one might logically assume that the system is still intact. On any given day, one can read in the 'paper that the courts are making law and taking away the power of Congress and the President or that the President or Executive Branch is exercising power that Congress or the Constitution has not granted. Within the last twenty years, our consensus of the President has gone from an imperial Presidency, to a weak ineffective President to a managerial President who delegates power and exerts his wishes through moral and ideological persuasion.

The same arguments about relative power have also been made about the Legislative and Judicial branches. However, the reason the arguments exist is because we believe that each branch does have Constitutional duties, and when it appears that any one branch is overreaching, the nation wants to correct the imbalance. The Constitution provides that each branch of government shall have specific duties and different constituencies. While it is politically sensible when running for office or sitting on the court to say that you represent everyone, the system was specifically assigned so that discrete units would have representation and protection although the needs of the nation were an overriding concern. The House of Representatives is apportioned according to population with one exception, each state shall have at least one member regardless of population. As a consequence, these elected individuals are directly accountable every two years to a specific number of people as determined by the decennial census. A rural representative may be diametrically opposed on legitimate grounds to the views of another member of the House from his state and party on a particular issue. In fact, Representatives who fail to consider the specific interests of their districts often are returned to the private sector before they wish to return. Senators, on the other hand, since they represent entire states, usually must balance the needs of many diverse interests, but as a trade-off have six year terms.

Federal judges with lifetime tenure, have much greater freedom to avoid the pressures of the electorate and consequently have more freedom to make decisions that may be distasteful or worse to the immediate majority. It is not just coincidence that the legal barriers to racial segregation were attacked first by the Judiciary in the late forties and early fifties, then by the Executive Branch in the fifties and finally by Congress in 1964 after the assassination of

President Kennedy. The Judiciary's freedom is not unlimited. Judges, too, are bound not only by the law but by the ultimate limits of their position. Their freedom can be endangered by straying too far from the existing norm. As John Marshall succinctly said in denying Indians fee simple rights in property in Johnson v. M'Intosh, "The courts of the conqueror cannot deny the conqueror's title."

As a society, we can understand these separations and generally approve of them. Occasionally, we each think that a branch is overreaching, when it is our ox being gored but generally the system not only is comprehensible, we even believe it is the best one possible. It is not surprising then when faced with a government that differs from the norm, we become suspect.

A common criticism of tribal government is that in most governments there is no separation of powers. Since the United States views separation of powers as one of its great governmental strengths, people find it difficult to imagine a government that is fair and just without this formal separation. And yet, neither Canada nor Great Britain has separation of powers, and both are governed in a fair and just manner. The test of fairness should not be a comparison of how close an Indian tribal government resembles that of an comparable non-Indian American government. The existence or non-existence of a formal separation of powers with checks and balances are examples of this template approach to Indian affairs.

Governments are a social contract. In examining tribal governments, one must consider the social contract that exists in the tribe and not draw upon outside models for comparison. This is not to deny that there are two elements that are critical in determining the values of any government: due process, or its more easily understood form, fundamental fairness, and the right of self-determination of the governed as to whom shall be governed.

The governing body of all Indian tribes, including villages, bands, nations or any other name that a group wishes to be known by, has various functions or modes. They often are in conflict, in exactly the same way that the branches of the federal government may be in conflict when carrying out their assigned constitutional roles. By at least identifying the modes and some situations where they are in conflict, it may be possible to reconsider some of the internal policies of the tribe and the external policies of the states and the United States, so as to provide for a fairer evaluation of the quality of government and to assist tribes in areas where assistance is needed. The identification of modes and the relative importance to each tribe will depend upon the uniqueness of the tribe.

However, one must always bear in mind that the Navajos on one level have almost nothing in common with the Poncas of Oklahoma, while, on the other hand, have everything in common. The distinction is not a koan, but an attempt to explain the common denominator that all tribes have while admitting the uniqueness of every tribe.

**GOVERNMENTAL POWERS** - Tribes have within limits, powers of self-government. The degrees of power are contingent upon the factors set out in defining the topologies, such as, geographic location, general or specific legislation by the tribe or by the federal government and perhaps the least understood restriction, the fear of exceeding the norm. This fear is easiest to understand if one equates it with the "chilling effect" tests under the First Amendment. However, within this right of self-government, the tribal council must perform the civil and criminal functions of most governments. The range

of power extends from trivial laws, such as the leash laws to control dogs in the old pueblo at Taos to matters of great economic importance, like the imposition of severance taxes on coal at Crow. Councils are faced with an increasing need to formalize rules to handle the governing of the tribe. This codification comes into direct contact with other modes of government. Whether the code is a result of internal needs, required for economic development for outsiders, to meet federal requirements for Public Law 638 contracts or other federal programs, or just to keep up with the Joneses is a tricky process. Tribes must be alert to the difference between the Hammurabi model and the Napoleonic model. The governmental function is essentially the exercise of police power and is a difficult task.

The United States' recognition of tribal self-government means that every tribe has some right to make its own laws and be governed by them. The degree of self-government that each tribe has is determined by numerous factors and every tribe's power to make a rule and enforce it must be examined within the context of the complex set of factors that controls each tribe. First, there are broad restrictions on tribal power of every tribe: the 11 the Major Crimes Act; and Indian Civil Rights Act of 1968; the Major Crimes Act; and portions of the United States Constitution that grant exclusive power to the United States, e.g. coining money, declaring war, granting copyrights and the Thirteenth Amendment to the Constitution which prohibits anyone from owning slaves. Second, there are statewide or nearly statewide restrictions on tribal power such as Kansas' or New York's criminal power and the civil and criminal grant of power to the states under P.L. 280. Conversely, a tribe may have power that it is unaware of because it falls under an Act of Congress that treats the tribe differently. Perhaps the most infamous of these special laws relates to the Five Civilized Tribes, but the United States Statutes at Large and Title 25 of the United States Code contain many laws that apply to a specific or a distinct group of tribes. Some of the laws are well known, including the Indian which allowed tribes to incorporate Reorganization Act of 1934 which allowed the federal corporations and provided certain protections from previous federal policies. Others are less well known but have dramatic effects on a particular issue. The Colville Reservation was granted the power to become an IRA tribe in 1956. Unless one was aware of this law, which is not contained in Title 25 of the United States Code, one would conclude that Colville would not be entitled to the benefits of the IRA. Similarly, the failure of the United States to find a specific statute passed for the benefit of the Crow Tribe as to the so called ceded strip resulted in expensive and perhaps unnecessary litigation. Obviously, the tribal government should become as familiar as possible with the general and special restrictions that may apply to the right of self-government.

The government then has another level of knowledge that restricts the degree of self-government that the government may exercise. This is the tribal constitution. Constitution is used in the broadest sense to include not only formal documents either perpetuated under the IRA or not, but also the traditional rules of the tribe. All tribes have a constitution in the sense that there are generally agreed upon boundaries of government. The limits of the boundaries are determined by the social contract.

PRIVATE - An almost antithetical duty of a tribal council is its need to act in a private or entrepreneurial method. The tribal council often acts just a private land owner would in making economic decisions. Choices to mine coal,

develop potash, drill for oil or attract a manufacturing plant are almost always based on the rate of return. General governmental policy decisions are usually of less importance than the rate of return.

This is in almost direct contrast to the United States. There, one need only look at the federal coal policy over the last fifteen years to see that money is not the primary decision. The Secretary of Defense does not call up the Secretary of Interior and request that more coal be mined to pay for another ranger battalion but in tribes that is usually the process. The issue is why must a tribe act in a private mode? The answer is simple: money. The reaffirmation of the right to tax as being a remaining right of self-government has been an important milestone in solidifying sovereignty. But one of the truisms of taxation is that in order for a government to make money taxing, there must be a base to tax. On many reservations there are businesses, leases, rights-of-way and mineral extractions, that could be taxed but with rare exception, the base, on even the largest reservations, is insufficient to provide the minimal vital services required to run a proper government. Taxation without a broad base is a chimera that tribes need to be aware of. For example, a business tax, whether it be gross receipts, sales, possessory interest or a percentage of the gross, may result in being passed on to the tribal residents themselves. Any tribe that contemplates a tax without at least investigating the incidence of that tax could be adding an additional burden on the members without any real gain to the tribe because of the cost of administration. States and the federal government have a base to tax that can provide some level of services. However, some states like New Mexico have such a small base that the tax rate would be prohibitive. Therefore a tribe must examine its wealth in the same manner that a private business would. This is perfectly legitimate because of the fungible nature of the dollar. Tribal income is tax free so income is income regardless if it is a dollar of royalty, rent or tax. Taxes are important for the non-tribal enterprises and the other important function of taxation, regulation. A tax may be both revenue and regulatory, but the council should never confuse one with the other.

However, even if this is clearly understood by the council, once a decision is made, the council is thrown back into its governmental mode and has to factor in job preference, roads, scholarships and other benefits for the tribe. There is an impression of getting something extra but in fact most companies that have dealt with tribes factor these additional demands into the offer and capitalize the cost. Tribes should be aware of this because it may be that the money for these "benefits" would accrue to the tribe anyway and the tribe would have greater freedom in applying the money to different needs.

The private and governmental modes may also come into conflict with tribal preference. For example, assume that a tribe has oil reserves and would like to grant tribal members the right to drill for the oil. This may allow some members to make substantial amounts of money, but it may not be the best economic choice for the tribe. Unless the tribal member has the resources to recover secondary and tertiary oil and gas reserves, those resources will be lost to the tribe forever. The cream will be skimmed. A better financed operator will use the first level oil to pay for the development of secondary and tertiary recovery increasing not only his return but the tribe's as well. This is not to oppose tribal support of individual Indians receiving the wealth, but to illustrate that the issues are often more difficult than they seem.

AGENCY - The tribe is often an agent of the United States. Professor Price once wrote that the notion of sovereignty allowed the government to funnel money to a specific group of people without having to worry about many of the constitutional issues that would arise with non-Indians, Mazurie v. United States reestablished the tribe as a legitimate entity for governmental programs that must be administered by a sovereign. The increase in tribes performing tasks once exclusively the province of the federal government has a price. The price is the tribe must conform to the rules and regulations controlling those programs. This has a normative effect on the tribe that spills over into other non-federally funded programs. The codification process of government is in many ways a reaction to the normative effects of pass-through monies. For tribes to try and operate two systems, one more traditional and the other conforming to the Code of Federal Regulations is almost impossible even without the funding problems of a double set of laws.

The agency aspect has another side effect. The tribe often receives a substantial part of its operating budget to run the entire tribe out of the administrative costs of pass-through or Public Law 638 programs. However, the tribe is usually underfunded for administrative costs, so that the tribe will not have the luxury of funding many of the hidden costs that were once assumed by the federal government. Thus, the price of freedom for many tribal employees is substantially lower salaries and non-existent benefits to perform the very same job they were doing as federal employees.

The final pass-through effect is expectations. Not only is the federal pass-through normative on the government's behavior, it is also on individual members. The expectation level is that the tribe must be if not better at least as good as the federal government. This is not to praise the federal government as doing a particularly good job, but money does make a difference.

TRADITION - The tribal government's most important role is the preservation of the tribe and its culture. Therefore, it is forced to balance the other modes against the values of the tribe. Tradition becomes both a code word to oppose change and a code word to oppose individuals. Opposition groups almost always call themselves traditionalists. Its meaning is often nothing more than a label and such irresponsible use of the word obscures the important role that tribal government must play in allowing the people of the tribe to make decisions that may seriously change the tribe. At the root of all Indian tribes is a fundamental question: If the tribe becomes so assimilated that it bears no discernible difference from the outside community, why have tribal governments at all?

No single decision of a council is isolated to any one mode. When the complexity of decisions is considered along with the relatively short tenure of many tribal governments, one can see that the job of governing an Indian tribe is one of the most difficult jobs in the world. There is a balance that must be maintained to stay in office, to govern in accord with the laws of the United States and the tribe, to maximize federal programs, to manage tribal assets, all in the context of constant attack by the state.

The question remains: what should a tribe do?

First, every tribe should be aware of the different modes that its government is operating in and try and understand how these different modes have synergistic effects on the other modes. In fact, many times, a tribal government is operating in more than one mode when dealing with a specific problem. In other words, realization of the problem is the first step toward resolving some of the problems.

Similarly, the Bureau of Indian Affairs, the House and Senate Select Committees on Indian Affairs, the Administration for Native Americans, the Indian Public Health Service and every other agency that has relationships with tribes should understand the complexities of tribal government. Until it is understood that there are problems, the chances of resolving them are very slim. Modes of tribal government should be examined in much greater detail and particularized to reflect the goal of the agency vis-a-vis a tribe. Such an effort is going to be critical if proposed plans to "trim down" the Bureau of Indian Affairs actually come to fruition. The "trimming down" will magnify the normative effect of the agency mode as tribes assume greater responsibility for federal programs. The realization that there is a normative effect should be considered when drawing up the guidelines for any given program.

As to the tribes themselves, a strategy that springs to mind is to do nothing. By nothing, I do not mean that certain corrections should not be made by individual tribes with specific problems after studying the modes of their own government. Instead, by nothing I am talking about any attempt to change the fundamental relationship between Indian tribes and the United States. Any attempt to change this relationship to cure some very serious problems may result in such unforeseen consequences that the cure may be worse than the disease. Actions that I consider dangerous usually revolve around eliminating the Bureau of Indian Affairs, granting the states more jurisdiction over tribes because of specific failures in tribal government or forcing the limits of self-government over non-Indians. Each of these examples exemplifies the "house" theory of Indian policy.

To understand the "house" theory one must understand how casinos make money. They make money because they have unlimited funds as compared to any one gambler, and therefore, the house odds will assure that over a given period of time the casino will win "x" percentage of money gambled. How long a gambler will last depends upon two factors: amount of stake and percentage of return, house odds. An individual gambler can choose to get up from the table at any time and, since in a short period the gambler may be ahead, can walk off a winner. But assuming the gambler does not quit, she will lose.

Indian policy is like the casino with two very important exceptions. Neither exception is favorable for tribes. The first difference is that tribes can never get up from the table and walk away a winner. The status is never frozen in time so the tribe is always gambling just to keep what it has. The tribe's stake is residual sovereignty. Therefore, when a tribe wins a case it means that the tribe continues to exercise that sovereignty. When it loses, it loses some of that sovereignty. If the tribes litigate 100 cases and win 99 they have suffered a serious blow because the 99 winners will be relitigated and if the tribe again only loses one, the 98 will be litigated. Rarely, if ever, is the question of tribal power beyond its borders. In truth, the issue is almost without exception testing the power of the state or the tribe on the reservation. The battle is almost exclusively fought over the tribe's stake, and the state, when it loses, only loses the right to control that aspect of reservation life. The tribe may win some of its rights back on occasion, but that is simply recognizing the status quo. The fishing cases are excellent examples of this process. The tribes won the right to have treaty rights recognized; they did not win a new right.

Similarly, when the Court upheld the taxing power of tribes in the Merrion v. Jicarilla and Navajo Nation v. Kerr-McGee, the Court was reaffirming a taxing

power that had been recognized as an attribute of residual sovereignty since the 19th Century.

The analogy is equally applicable to trust obligations. The obligation is defined by the United States, so when a tribe loses a trust case as in Mitchell I, the legal relationship between a tribe and the United States, described by Justice Marshall as a "ward to its guardian," is diminished.

While tribes cannot change the odds or the stake they can make better bets. Better bets entail examining what the downside loss is as compared to the gain. If one were to offer a millionaire a business deal that would turn his \$10,000 stake into \$1,000,000 but there was a 90% chance of losing it all, the millionaire may well take it since the \$10,000 loss would have little, if any, effect on his wealth and a \$1,000,000 win would double his money. However, if one were to offer the same deal to a person whose life savings were \$10,000, he may not take it because the loss of his life savings would have a much greater effect on his life than becoming rich. Consequently, one must examine not only the gain of winning but the effect of losing. To turn it into a tribal analogy, one only need look at the sovereign immunity questions that are now circulating through the lower court systems. A tribe may be free under existing law to avoid paying a lawfully incurred debt because the contract failed to properly waive immunity leaving the creditor without an adequate remedy. The savings made by these incidents, which are still rather rare, may eventually cost the tribes sovereign immunity, or a substantial loss of sovereignty. Justice Black's stinging dissent over the United States breach of a trust obligation in Federal Power Comm'n v. Tuscarora, in which he said, "that great nations like great men must keep their word," is equally applicable to Indian tribes.

Indian affairs have historically been altered in fits and starts that, while reflective of society at large, are often afterthoughts. Major changes have occurred four times in the history of the United States, and we are now clearly in the fifth. In times of change, Indians should tap their way across stone bridges.

## NOTES

1. Department of Game v. Puyallup Tribe, Inc., 422 P.2d 754, 758 (Wash. 1967).
2. 435 U.S. 9 (1978).
3. 358 U.S. 27 (1959).
4. 8 U.S.C. § 1153.
5. 8 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326.
6. 25 U.S.C. § 232.
7. 8 U.S.C. § 3243.
8. E.g., 25 U.S.C. § 355, 375.
9. 43 U.S.C. §§ 1601-1628.
10. 2 U.S. (8 Wheat) 543 (1823).
11. 25 U.S.C. §§ 1301-1341.
12. 25 U.S.C. §§ 476 et seq.
13. 49 U.S. 544 (1975).
14. 455 U.S. 130 (1985).
15. 47 U.S. 195 (1985).
16. United States v. Mitchell, 455 U.S. 535 (1980).
17. 35 U.S. 1, 6 (1956).

## THE PARADOX OF MODERN INDIAN AUTONOMY

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This session, as you can see from the program, is entitled "Self-Determination and Termination: The Paradox Of Modern Indian Autonomy." It is a pretty broad and pretty vague title, which could take us in many directions, but aspects of its meaning, at least, come into focus in the two papers we have heard. I did not find Don Fixico's paper as clearly stated as I would have liked, for he touches on a great many points that he did not have time to develop properly. But his perceptive message comes through clearly enough in the end: The policy of termination--imposed from without and feared by tribes that did not experience it--failed. Indians, culturally different from mainstream white society, did not want to conform to the mainstream completely, and many elements in mainstream society would not accept them. Termination was a blow to Indian sovereignty. On the other hand, the policy of self-determination, which replaced that of termination, he sees as successful or at least potentially so. And it, unlike termination, gives a new boost to tribal autonomy. All this seems fair enough and will probably arouse little controversy.

For our discussion, I have pulled out three points from Fixico's many-faceted paper that I think need more attention and development.

1. Conflicts within tribes. Fixico notes that tribes like the Osages that were unified were able to fight off termination. But he does not explore fully enough the part played by intratribal disagreements and factionalism in the termination of the Menominees and especially of the Klamaths. And in the move toward self-determination and economic development, as the basis for tribal political autonomy, the problems that arise from factionalism within tribes cannot be simply pushed out of view but must be studied and weighed properly in any analysis of tribal development.

2. Economic autonomy as the basis of political autonomy. Some of the best parts of Fixico's paper deal with this important consideration, for he correctly emphasizes the importance of economic bases for political sovereignty. But historians have been slow to turn their attention to the economic history of the tribes and to place it within the context of disagreements within tribes about economic development. Why do tribes have to be pulled "kicking and clawing, into the 20th century," as the Rosebud Sioux president is quoted as saying? Fraud and corruption, too, if we are to believe the recent Senate hearings, play a big part. I realize that Fixico wrote his paper before these new revelations, but there is a long history of fraud and corruption in Indian and in BIA economic activities that ought to be investigated by historians, not just by newspaper reporters and Senate committees.

3. Fixico talks about the relocation policy of the federal government in the 1950s as an aspect of termination (although I think he attributes too much of the massive Indian urbanization that has occurred in the past two decades to that program), but he does not seem to face squarely what urbanization means to tribal autonomy. Self-determination, political autonomy, sovereignty--all are seen within a tribal, reservation setting. Is it proper, at the end of the century, to

concentrate our study of Indians and Indian developments within the nation on these concepts, which developed under a different set of demographic facts?

Fixico's paper certainly points up the paradoxes that persist in Indian affairs. I will indicate just two, but you no doubt noticed others as Don presented his paper.

1. The use of mainstream tactics by Indian leaders in order to prevent moving into the mainstream as terminated Indians. The sophistication of the Indians in dealing with the federal government and with white society has often been noted in recent times. But is this a development of Indian cultural traits, or is it a capitulation--a necessary capitulation perhaps--to white ways?

2. The more the Indians succeed in self-determination, the closer they come to self-determined termination. Can the tribes become economically and politically autonomous, can the BIA be taken down, without termination, in effect, occurring? Or shouldn't we worry about that?

Fred Ragsdale's paper is of quite a different sort. Its purpose is to show us the complexities of modern tribal government, to convince us that, as he says at the end of his paper, "the job of governing an Indian tribe is one of the most difficult jobs in the world." In the process we are treated to a wondrous array of templates, modes, roles, classificatory criteria, topologies, and subtopologies. His heavy reliance on categories and classifications makes a historian like myself cringe, but there is a lot of wisdom in what he says.

He properly emphasizes the importance of political status for Indian tribes, which sets them apart from other ethnic groups. He speaks perceptively about the formation of modern tribal governments under the necessity of tribal dealing with outsiders. He properly underscores the great diversity of tribal governments. And he effectively warns against applying Anglo-American norms to the governments of the Indian tribes, thus erroneously judging them by preestablished templates.

Much of his effort, once he gets past a good deal of historical survey, is in establishing "topologies" of tribes. Part of my trouble here is with the word topology, for he uses it in an innovative way, unrecognized by any of the dictionaries I consulted. the "-ology" suffix would seem to indicate that topology is the study of something, and so the dictionaries assert. Even if we change the word to typology, which seems closer to what he means, we are still struck with the "-ology" suffix, meaning 'the study of.' He obviously is using the word as a rough synonym for category.

But if we accept his use to mean category or type of tribe, it seems to me that the five he distinguishes are not adequately distinct. The first three are well-defined and clearly distinct types, but classification of tribes as wealthy or poor seems to shift the basis of discussion.

Nevertheless, his is a useful attempt at categorization in order to show complexity and to warn us away from simplistic lumping of all tribes together. There is a danger, though, that he is creating his own set of templates, which could tend to deemphasize the historic individuality of the tribes and their governments. The complexity--of both the tribes and of Ragsdale's discussion of them--increases still more when we learn that "each topology has numerous subtopologies, and each sub has elements of another" and that various modes of government interact with each topology.

Ragsdale faces the old philosophical problem of unity and diversity. He knows the differences existing between the tribes, yet he acknowledges a basic common denominator that sets Indian tribes apart. His analysis of this commonness is good, as he discusses the different modes: strictly governmental powers, private or entrepreneurial powers, delegated powers as agents of the federal government, and the powers needed to preserve traditions.

Ragsdale warned us at the beginning that his goal was "not to provide answers but to attempt to articulate questions." He has certainly met that goal. He has provided one framework in which tribes--and non-Indians, too--can face the problematic future of tribal governments. He asks at the end, "What should a tribe do?" The answers will be more intelligently arrived at by a consideration of the points that he has proposed in his paper.

Both papers raised anew in my mind a question that has bothered me for some time. We glibly speak of autonomous tribal governments and of their government-to-government relations with the federal government, but we equate these entities with any group of Indians recognized by the United States. It is instructive to read through the annual lists of recognized tribes in the Federal Register, which, in fact, in the early 1980s at least, were entitled "Indian Tribal Entities That Have a Government-to-Government Relationship with the United States." The population of some of these tribes is less than a dozen persons. What sort of tribal government is possible in such cases, what sort of government-to-government relations? And this does not speak of the similar list of Alaska Native villages; as Ragsdale notes, "The political status of native villages in Alaska is one of the great unsettled issues of Indian law.

But don't we need some kind of definitions, limitations, or guidelines that will help to identify viable tribal governments. Here is a "topology" that Professor Ragsdale might work on.

# INDIAN SELF-DETERMINATION - THE IDEAL AND INDIAN SELF-GOVERNANCE - THE REALITY

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President, Quinault Indian Nation

No right is more sacred to a nation, to a people, than the right to freely determine its social, economic, political and cultural future without external interference. The fullest expression of this right occurs when a nation freely governs itself

We call the exercise of this right self-determination. The practice of this right is self-government.

The Quinault Indian Nation and other Indian Nations in the northwest part of the United States take the practice of self-government seriously. Each of our nations has worked unceasingly to resume self-governing powers - powers which were eroded by US government and state government interventions. Instead of asking for the return of the right to govern ourselves, the Quinault Indian Nation and neighboring Indian Nations have taken the initiative to take back those powers. The Quinault Indian Nation's goal is to fully resume self-government, and we are making substantial progress in that direction.

The road back to full self-governance is long and difficult, Indian Nations must overcome more than six generations of US inspired erosion of their governmental powers.

Not since before the United States government decided in 1871 to cease making new treaties with Indian Nations have Indian nations fully exercised self-determination or self-government. Since 1871, one hundred eighteen years ago, Indian nations have not been able to govern themselves, or they have only been partially self-governing. For nearly twelve decades, Indian nations have been governed by a US government agency - the Bureau of Indian Affairs - and the United States Congress and the US Federal Judiciary. The US administrative agency, and the legislative and judicial branches of the United States government have assumed either absolute, or nearly absolute authority to govern Indian nations, that these nations neither conveyed or granted such extraordinary powers to the United States. By its own independent act in 1871, and subsequent assumptions of power, the United States government exercises powers over Indian nations comparable only to dictatorial powers exercised by the most absolutist governments in the world. This prolonged erosion of Indian governmental powers has never been agreed to by any Indian nation, yet formerly self-governing nations now exercise very limited powers of government.

In recent years, the United States government proclaimed its commitment to a policy of Indian self-determination. Succeeding US administrations since 1970 elaborated on this concept. They endorsed the policy of Indian self-government and later a policy to carry out relations with Indian nations on a government-to-government basis.

The difference between stated US policy and its actual implementation is an excellent measure of misunderstandings and misconceptions. This is clearly true for the US Congress and past Administrations in their conduct of Indian Affairs. President Reagan in his White House Indian Policy Statement of January 1983 spoke eloquently of his support for government-to-government relations with Indian Tribes. In his Presidential proclamation 5745 of November 19, 1987,

issued on the occasion of "American Indian Week" November 22-28, 1987, Mr. Reagan said:

The Constitution affirmed the special relationship of the Federal government with American Indians when it stipulated; "the Congress shall have power to ... regulate commerce with foreign nations, and among the several states, and with the Indian Tribes,..."

This unique government-to-government relationship continues today and has been reinforced through treaties, laws and court decisions. During the Bicentennial of the Constitution, it is especially fitting that we recognize and celebrate the many contributions of American Indians.

I agree with Mr. Reagan's sentiments in principle, but certainly not in the practice of policy.

Despite these pronouncements, the US government has continued to hold on to its monopoly over tribal governmental powers. The US government's policy commitments seem irreconcilable with the commitment to continue its assumption of greater powers over Indian nations and the consequent erosion of Indian government powers.

This paradox was clearly described by Milner S. Ball in the introduction to his fascinating American Bar Foundation Research Journal article: Constitution, Court, Indian Tribes. He wrote:

We claim that the "constitution, and the laws of the United States which Shall be made in pursuance thereof... shall be the supreme law of the land." But we also claim to recognize the sovereignty of Native American nations, the original occupants of the land. These claims - one to jurisdictional monopoly, the other to jurisdictional multiplicity - are irreconcilable. Two hundred years have produced no resolution of the contradiction except at the expense of the tribes and the loss to non-Indians of the Indians' gift of their difference.

There is no doubt in my mind that the US Constitution is profoundly contradicted by the past policies and practices of succeeding US governments toward Indian nations. It is equally clear to me that the contradictions between the US Constitution and US government practice are irreconcilable within the framework of the US government and the US legal system alone. The remedy is not solely within the US government and its legal system, but in the resumption of governmental powers by Indian nations as a result of negotiations between the United States and each Indian government. The only acts of substance the United States government must initiate is the repeal of its 1871 denial of treaty negotiations; the implementation of the policies of Indian self-determination and the conduct of relations on a government-to-government basis.

The outcome of negotiations between the United States and individual Indian governments should be many self-governing Indian nations which are freely associated with the United States. Each Indian nation should be politically autonomous, but with a formal agreement of political association with the United States. This means that each nation ought to exercise full internal control over economic, social, political and cultural activities within established territorial boundaries. It must have full internal self-governance. External relations would be conducted in consultation with the United States government.

Just as the United States has free association agreements with other nations like the Federation of Micronesia, similar agreements ought to be concluded with Indian nations.

The US government's Indian self-determination and government-to-government policies should directly advance tribal self-government and tribal self-sufficiency. Between the US Administration's current monopoly over tribal administration and the US Congress' legislative monopoly which is justified by the United States under the "plenary power doctrine," tribal self-government and tribal self-sufficiency will remain an ideal and never become a reality. The administration of the Bureau of Indian Affairs and the Indian Health Service is persistently criticized by Indian leadership. This persistence is in particular aimed at the unwillingness of these agencies to conduct meaningful, two-way consultations with Indian officials about agency policies and programs. These agencies consistently formulate poorly conceived policies behind closed doors, and then promote their adoption by the US Congress. Indian government officials have constantly been faced with the need to stop or alter these negative policies in the halls of the U.S. Congress. This is the current practice of "government-to-government" relations which evolved historically and remains entrenched in practice to protect bureaucratic self-interest and US interests.

Since the enactment of the Indian Reorganization Act of 1934, United States policy has attempted to promote social and economic self-sufficiency within Indian nations. How the US government carries out this policy has remained an issue of controversy. This is due, in part, to the widely divergent views of US administrators and legislators over what the outcome of this policy should be. To some, self-sufficiency means the perpetual social, economic and political existence of Indian nations - exercising the full powers of self-governance. To others, self-sufficiency means the elevation of social and economic standards on Indian Reservations equal to neighboring, non-Indian communities and, the ultimate elimination of Indian nations through assimilation.

Self-sufficiency among Indian peoples means that Indian nations are able to govern their own country and peoples without external interference; Indian peoples can renew their natural creative abilities to feed themselves, house themselves, and clothe themselves. Indian people will be self-sufficient when they rely on their own labor and natural resources to become prosperous. Self-sufficiency also means that Indian peoples can freely decide how to best serve their social and health needs and refine their cultural life, clearly, self-sufficiency is the means to ensure the perpetual existence of a nation as a distinct social, economic and political society.

In response to the extensive dislocation of Indian peoples caused by the General Allotment Act of 1887, and observing the extreme poverty of Indian Nations, the US government enacted the Indian Reorganization Act of 1934 as a kind of "New Deal" for Indian Country. Indian nations were to have an economic and political relationship with the US that would "maximize political democracy and self-government" among Indian peoples and ensure sufficient economic support to achieve social and economic self-sufficiency. Though apologists for the Indian Reorganization Act thought the law would liberate Indian nations and promote their social, economic and political self-sufficiency, as a practical matter it became the instrument by which the US government assumed greater autocratic rule over Indian Country.

Felix Cohen observed in his 1942 Handbook of Federal Indian Law, "Self-government is the Indians' only alternative to rule by a government

department." He noted that self-government "included the power of an Indian tribe to adopt and operate under a form of government of the Indian's choosing, to define conditions of tribal membership, to regulate domestic relations of members, to prescribe rules of inheritance, to levy taxes, to regulate property within the jurisdiction of the tribe, to control the conduct of members by municipal legislation, and to administer justice." All of these are the attributes of political sovereignty - of political autonomy. The U.S. government effectively undercut the exercise of these and other natural powers of governance by Indian nations.

While the US government has moved to assume greater powers over Indians and their territories, Indian leaders have not sat idle accepting every encroachment. Wary of the possibility that the United States could withdraw its meager support and crush each nation, but alarmed at the disastrous affects of U.S. encroachments, many Indian leaders attempted to push back the onslaught. From 1948 through 1957, Indian leaders meeting in the National Congress of American Indians adopted many resolutions conveying their concerns to the United States government. In 1957, the efforts of Indian leaders culminated in the drafting of US Congressional legislation called Concurrent Resolution No 3. Though never adopted, this resolution became the most comprehensive statement of Indian government policy opposing termination and advocating Indian self-government and economic reconstruction of Indian Country.

NCAI President Joseph Garry, the renowned chairman of the Coeur d'Alene Tribe, endorsed Concurrent Resolution 3 in his testimony when he noted that efforts to terminate Indian nations by private citizens and the Bureau of Indian Affairs "kept the Indians so busy defending themselves they had no time or even energy for Constructive planning or actions" which would enhance self-sufficiency. Though the US Congress did not accept Concurrent Resolution 3, it did provide a forum in which chief Garry and other Indian leaders began to formulate an Indian agenda for Indian Affairs.

By 1959, the Indian agenda for Indian Affairs began to take shape with the National Congress of American Indians adoption of a Statement of National Policy. In a more comprehensive statement of the Indian agenda, 460 Indian leaders from 90 tribes met in the American Indian Chicago Conference and developed the Declaration of Indian Purpose and adopted it on June 20, 1961. D'Arcy McNickle chaired the steering committee for this conference. This Declaration can be summed up in these two sentences which I quote from its creed:

We believe in the inherent right of all people to retain spiritual and cultural values, and that the free exercise of these values is necessary to the normal development of any people. Indians exercised this inherent right to live their own lived for thousands of years before the white man came and took their lands. It is a more complex world in which Indians live today, but the Indian people who first settled the New World and built the great civilizations which only now are being dug out of the past, long ago demonstrated that they could master complexity.

Another great leader, chairman Earl Old Person of the Blackfeet Tribe, was president of the National Congress of American Indians in 1966. He saw that despite Indian efforts to persuade the United States to change its attitudes toward Indian nations, the patterns of the past continued. He sharply reacted to

heavy-handed Bureau of Indian Affairs efforts to undermine Indian nations. He spoke before a conference in Spokane, Washington when he said:

Again, I say, "let's forget termination and try a policy that has never been tried before - development of the Indian reservations for Indians and development of Indians as human beings with a personality and a soul and dreams for a bright future." why is it so important that Indians be brought into the "mainstream of American life" what is the "mainstream of American life?" I would not know how to interpret the phrase to my people in our language. The closest I would be able to come to "mainstream" would be to say, in Indian, "a big wide river." Am I then going to tell my people that they will be "thrown into the Big, Wide River of the United States?"

Just as President Joe Garry before him called for a new Indian Affairs agenda "setting aside the idea that Indian Nations should be terminated," President Earl old Person called for Indian Nations and the United States to focus on "rebuilding Indian Country. "Both N.C.A.I. Presidents called upon the United States to recognize the inherent intelligence of Indian people and "their ability to decide for themselves what future they shall have." This is the essence of self-determination.

After more years of Tribal demands for tribal self-determination, President Richard Nixon finally announced a US policy of "Indian Self-Determination" in 1970. Five years after the U.S. Administration proclaimed its support for the self-determination of Indian Nations, the US Congress enacted the Indian Self-Determination and Education Assistance Act. The principle of the self-government of Indian Nations had been finally agreed to by the United States. Even with this clear commitment, the Bureau of Indian Affairs continued its practices of dominance and intrusion into the affairs of Indian governments. When the American Indian Policy Review Commission completed its two-year study in 1977, it became clear that while the principle of Indian self-governance and the promotion of Indian self-sufficiency functioned as "buzz words" in the U.S. bureaucracy, the practical application of Indian self-government was far from being achieved.

The Department of the Interior and the Bureau of Indian Affairs so distorted the U.S. President's Self-Determination Policy, and the Congress's Self-Determination law that the practical effect of the policy resulted in "handing the responsibility of providing services and assistance to Indians over to Indian governments, but holding back the authority to decide with flexibility how to meet the needs of Indian communities." Indian Nations were achieving self-determination in name only, while the Bureau of Indian Affairs became more powerful and intrusive into Indian Affairs.

When I became the President of the National Congress of American Indians, I became determined like my predecessors to press for the Indian Agenda, I proposed in a speech before the Fortieth Annual Convention of the National Congress of American Indians in Green Bay, Wisconsin (1983), "that we make a decisive departure from the recurring issues that divert our attention from the most important priorities and initiatives necessary to establish meaningful government-to-government relations with the United States." I proposed to Indian leaders that we take "the next logical step beyond the Indian Self-Determination Act" with the enactment of a Tribal Grant-in-Aid-Act. I urged that such an Act:

would authorize five year financial agreements between Indian Nations and the United States, negotiated to cover Tribal government operations, economic development, housing, health and human services, and other Tribally-determined needs. The Grant-in-Aid would require a line item appropriation from Congress for each Indian government concluding an agreement with the United States and funds would be disbursed through the Department of the Treasury. The Act would include a transition clause allowing Tribal governments a supportive bridge from PL 93-638 Contracting to grant-in-aid management. Each agreement, of course, would provide that the trust relationship and obligations of the United States will be upheld....

In 1986, I worked with nine key tribal leaders around the country in an Alliance of American Indian Leaders to build a consensus for "the next logical step beyond the Indian Self-Determination Act." These courageous leaders worked hard and long, and produced in 1987 a proposal to the US Congress that it adopt a Concurrent Resolution setting Congressional policy to recognize the role of Indian Nations in the formulation of the US Constitution, and particularly the Congress would recognize the principle of government-to-government relations with Indian Nations. We also worked to develop a comprehensive proposal to the Congress that it support a country-wide process of consensus-building among Indian governments on the principle of self-government. Our proposal was received by the House Interior and Related Agencies Sub-Committee on Appropriations. It still awaits Congressional action.

While the Alliance of American Indian Leaders pressed for reforms in Congressional policy, the Affiliated Tribes of Northwest Indians, of which I had become President, was also pressing for extensive amendments to the Indian Self-Determination and Education Assistance Act. In the Fall of 1987, after major progress had been made by both Alliance Leaders and the Affiliated Tribes, Assistant Secretary of Indian Affairs Ross Swimmer unilaterally initiated a Bureau of Indian Affairs proposal to the Appropriations Sub-Committee calling for "a demonstration project to transfer BIA, resources at all levels" to Indian Tribes seeking such a transfer. Mr. Swimmer's proposal contained a provision absolving the US of its Trust obligations to those tribes accepting the transfer.

Congressman Sidney Yates of Illinois, a long-term advocate of reorganizing or dissolving the Bureau of Indian Affairs and chairman of the House Interior and related Agencies Appropriations Sub-Committee, asked me and Lummi Tribal chairman Larry Kinley to meet with him to discuss the Bureau of Indian Affairs proposal. The product of those discussions was a proposal we developed for the establishment of an "Indian Self-Governance Demonstration Project" which would maintain the US government's trust responsibilities, Congressman Yates' Sub-Committee accepted our alternate proposal and included it in the Appropriations Act of December 22, 1987. The first movement toward US and Tribal implementation of self-determination and Indian Self-Governance had begun. Most importantly, it had begun as a result of discussions and negotiations between Indian leaders and the Congress.

The Appropriations Act of December 22, 1987 included two paragraphs which may well change the very nature of Indian Affairs and future relations between Indian Nations and the United States. While the Act provided \$1 million dollars for self-determination grants to support the self-governance demonstration project, it did much more, It directed "the Bureau of Indian Affairs formulate a proposal for the equitable distribution of resources and service responsibilities between" demonstration tribal governments. It also provided that demonstration

tribes undertake a self-governance planning period and conduct "legal and budgetary research, internal tribal government planning and organizational preparation, and the negotiation process" with the United States government. The Act specifically provided that negotiations of funding transfer agreements between demonstration tribes and the United States "include a clear delineation of trust responsibility protections assumed by the tribes and retained by the United States government."

The significance of this Act is that it was developed between Tribal leaders and the Congress. It also re-opens a formal process of negotiations between Indian nations and the United States.

By September 1988, the Congress of the United States enacted substantial amendments to the Indian Self-Determination and Education Assistance Acts and included in that Act was a special Title which authorized the Indian Self-Governance Demonstration Project for five years. Under the dual Acts of 1987 and 1988, Indian Nations and the US Congress have formalized process which allows for Indian Nations to undertake up to two-years of self-governance planning, conduct negotiations with the United States for Annual Funding Agreements and carry-out the Indian Self-Governance Demonstration Project after successful negotiations.

The Quinault Indian Nation and nine other Indian Nations around the country are the first to initiate the self-governance planning process. Authorizing legislation which we proposed and was made a part of the Indian Self-Determination and Education Assistance Amendments Act of 1988 provides that ten more Indian Nations may begin the process. Forty-two Indian nations have now applied to become self-governance demonstration tribes.

The mechanisms have now been set up between the United States and Indian Nations to permit Indian Nations to take "the next logical step beyond the Indian Self-Determination Act." Not since before 1871, has there be a greater opportunity for Indian Nations to reassume the powers of self-government, and for the United States to turn its policies of self-determination and government-to-government relations into a practical reality.

While I am personally gratified that we have made such progress toward implementing self-determination, I must say I am shocked to see the obstacles to making Indian Self-Government a reality. The Bureau of Indian Affairs, several tribally employed consulting and legal firms, and some Indian professional associations have been among those who are attempting to subvert and undermine the self-governance process. Since the summer of 1987, the politics has been intense.

Until we began the self-governance process, I would never have believed that some of the most vocal advocates of Indian self-determination would become the most vigorous opponents of self-governance in action, Indians and non-Indians alike are among the small, but vocal minority, working to subvert the self-governance process. Using resources provided by the United States government and by Indian governments, these individuals and their associations charge that self-governing nations will have graft, waste and frivolous expenditures of revenues if they control their own economic, social and political destiny. They have attempted to frighten tribal staff members into believing their jobs are in jeopardy. They even suggest that those of us in self-governance planning governments and the people we hire to work with us are "in it for the money" - suggesting that the self-governance demonstration process is merely a ploy to rake off funds from the U.S. government.

In the face of these petty charges and maneuvers, self-governance planning tribes have remained steady. We know that the process of evolving self-governance and self-sufficiency is a complex task. We also know that many people and institutions will be threatened by our efforts to reassume tribal self-governance. We remain steady because we know that the future of Indian Nations in the United States depends on our becoming self-sufficient and self-governing societies as we were once before. We seek to have recognized the inherent intelligence of Indian people and "their ability to decide for themselves what future they shall have."

The Self-Governance Process which has been set in motion will require great discipline, careful dialogue, sometimes heated debate and serious government-to-government negotiations. The new Indian Affairs agenda has now been set in place. It involved discussions and negotiations about the process of government-to-government relations between Indian governments and the United States. It includes the need to discuss in detail and without bias, the nature of tribal governmental powers of legal and political jurisdiction and the future relations between tribal governments and the citizens and residents living inside reservation boundaries. The New Indian Affairs Agenda means consideration of future relations between self-governing Indian Nations and neighboring counties and states. It means fundamentally restructuring the political shape of Indian Affairs. What will be the political status of self-governing Indian nations in relation to the US Federal System? What will the economies of self-governing Indian nations look like? How will they be defined and organized?

The prospect for self-governing Indian nations freely determining their own social, economic and political future is becoming a reality. It is happening because Indian Nations took the initiative, and have begun already to determine for themselves in discussions and negotiations with Congressional leaders, what the principles and processes leading to self-government will be. The prospect of negotiations between self-governance planning tribes and the United States still looms on the horizon. How or whether individual negotiations actually proceed will become an important test of the process agreed to with Congress. Since the Quinault and the other nine tribes are the first to consider the prospect of negotiations, I do not anticipate an easy road. If we are successful at this stage, other Indian Nations which follow will doubtless have an easier time of it.

After negotiating a compact with the United States for Annual Funding, several Indian Nations will then be in the actual Self-Governance Demonstration phase of things. For up to three years, these self-governing nations will be tested in a way never before tried. If my government decides to enter into negotiations with the United States, I expect we will experience some of the most exhilarating and difficult times. No one ever said the exercise of self-government is an easy thing. Several Indian governments have begun the planning process and many more wait for the opportunity. All must now seriously consider the implications of Indian nations reassuming the powers of government. Of that I am absolutely certain.

I began these remarks by saying the Quinault Indian Nation and its neighboring Indian Nations have made substantial progress toward resuming full self-governance. Our experience over the last twenty-years demonstrates that the reality of self-government comes only when Indian Nations take the initiative themselves. The leadership of northwest tribes to negotiate the early steps of the Self-Governance Demonstration Project with key leaders of the US

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Congress has already begun to show promise. Twenty-four Pacific Northwest Tribal representatives directly participated in the negotiations of the US/Canada Pacific Salmon Treaty which was ratified in 1985. As an expression of their growing self-governing powers, these Indian Nations now have representatives sitting on the Treaty Commission and fisheries panels along side representatives of Canada and the United States. Many of those northwest tribes involved in the US/Canada Salmon Treaty negotiations also negotiated an agreement with the State of Washington to protect, preserve and rehabilitate the environment. This Timber, Fish & Wildlife Agreement ensures tribal governmental authority in these critical areas. As a result of discussions with the State of Washington, ground-work has been laid to deal with social and health administration and tax jurisdictional issues between Indian Nations and the State of Washington. Each of these steps have contributed to the resumption of Indian governmental powers.

The political landscape is changing. The test of self-determination is now before us. The prospect of really self-governing Indian Nations is now a probability and not merely a possibility. The New Indian Affairs Agenda is now unfolding, and Indian self-governance and Indian self-sufficiency are the primary topics of that agenda. We cannot turn back. We must now muster all of our creative energies and leadership powers to achieve the full exercise of Indian self-determination - an ideal that is now becoming a reality.

## SUMMARY

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As those of you who know me are aware, I am quite interested in the subject of ritual, a very powerful force in social interaction. Obviously, ritual is also very much involved in politics. Although none of the papers really focused on this aspect, the power of ritual is omnipresent. Even conferences like this one are rituals. We often start off with a series of ritual excuses: "I didn't get the papers in time," "I've written it all out, but it's too long," "To save time, I'll summarize my remarks" (which usually takes longer than if one had read them). These are forms of ritual behavior.

In my view of conferences as rituals, they turn out to be what Marcel Mauss described as total social facts or, at least total academic social facts. The various kinds of presentations, offerings, counter-offerings, levels of exchange, time-out-of-time, space-out-of-space (the special Newberry milieu), exchanges in the hall, during breaks, after sessions, all these do indeed occur, but the obvious structure is provided by the papers. In good Maussian fashion, the papers can be seen as gifts, offerings, reciprocated by commentary, questions, both formally and informally.

My task is to provide an overall commentary, particularly since some of the papers were slighted by commentary that sometimes produced interesting mini-papers in their own right. I shall comment on each paper in turn. My mode of presentation will borrow from a Southeastern Middle Woodland style of pottery decoration called "stab and drag." I will pick on a few points and try to drag something out of them by free association. Let me make it clear at the outset that most of the papers were fine and stimulated our thinking, as were the commentators.

Richard White's paper on the "middleground" provides a progress statement on how his thinking is going, but I don't think this concept is fully defined as yet. When we think of "ground," we sense a spatial notion, but the boundaries are not completely clear. Also, White's excellent paper asserts that the middleground existed in time, but when it began and ended are not fully worked out, although he does provide 1650-1812 as bracket dates. What is most striking is that White is a special kind of historian, one who attempts to make generalizations relying directly or indirectly on social science. I heartily approve of his efforts. White, himself, can be seen as a kind of middleground between history and social science.

He focuses on interactions and exchanges. One of the most evocative statements in the paper was the degree to which everyone in the middleground functioned in terms of agreed upon misunderstandings. Rather than that being exceptional, I submit that most communication, including what I am providing now, is also based upon agreed upon misunderstandings. If we all understood each other perfectly, we wouldn't have anything to talk about. I applaud this kind of approach. He extended his interpretive approach by using kinship idioms, which are so universally important. However, he did not work out their full ramifications. I'd like to suggest how to push this dimension a little further.

The role of father became a metaphor for many kinds of relationships involving Indians and the French colonial government. The notion of a father/children relationship is an important one. Mothers are also important, as are other kinship relations that need to be examined. As Bill Fenton noted, a longstanding interest of his, and of Frank Speck before him, has been the use of kinship metaphors to discuss relations between groups, which change over time. Whether, for instance, Delawares are fathers, brothers, nephews, or mothers to other Eastern Woodland groups is variously expressed in early documents, treaties, and communications.

At the start of the paper, White discussed applications of the concept of "sauvage" by the French and of "manitou" by the Algonquians. There is a vast literature on the subject of the manitou, which is sometimes conceived as diffuse power, like mana in the Pacific, and which is more frequently concentrated in spiritual beings and locales where humans can interact with and form relationships with it/them. Manitous are close to the Ojibwa notions of pawaganaks, beings encountered in vision quests who bestow individual powers, prerogatives, the right to create bundles, and impart songs to maintain the relationship. These are personified partnerships with the spiritual world. Usually, the kinship term applied to these beings is grandfather.

What I am suggesting is that we look for a three-generational model in which Europeans start as grandfathers, shift to fathers, and, in the middleground, might achieve a temporary equivalence as brothers. For example, consider the two letters between Handsome Lake, the Seneca prophet, and Thomas Jefferson, where the President refers to the Seneca as his brother or his son, suggesting aspects of a relationship changing over time. If it started as grandfather/grandson, the implied power differential helps explicate references to the natives beseeching the French, as an appropriate appeal to perceived power. In terms of a father, the kinship relations imply guidance, advice, support, and council, depending on the overall descent system (matri-, bi-, or patri-lineality). More can be done with contextualizing these kinship metaphors.

David Weber dealt with a large area from Florida to the Southwest and California. As he noted, most of the scholarship of this region has been influenced by Herbert Bolton's work to show the human side of the Spanish in contrast to the "Black Legend". Weber did not mention that Bolton also had a close, careful interest in Indians, especially in his early work. His manuscript on the Hasinai, a Caddo group, was finally published recently. Bolton also corresponded with John Swanton, the premier ethnohistorian of the Southeast.

On a more general note, unlike White's interest in social science, Weber is a traditional historian who looks at the documents, although he is sympathetic and interested in getting the Indian side of things. But here he runs into a block. How do we get the Indian side? It is not in the documents.

Historians devote their lives to documents. These records are analyzed, dated, arranged, and probed in the expectation that, magically, an account will jump out of them. As most of you know, however, that is not the way it works in ethnohistory. Regardless of one's orientation or training, we try to tell a good story informed by some kind of script.

For a long time, the story telling ability of historians was just assumed. It was just something that was done. You were good at it or you were not. More and more, I think, we are becoming self-conscious about this ability and looking at it in terms of narrativity: What the script actually is.

Certain modern French thinkers have argued that the script is very, very important. For them, the major task of history is to make public the script.

perhaps even to generate it. This runs counter to most historical orthodoxy, which holds that we should not be inventing history, even though we do. There is no such thing as objective history. It is all a story of one sort or another. Some stories are close to known facts and some are more adventuresome.

Thus, when a block is encountered, such as the lack of documents from the Indians and their more general silence in Western history, the only way out of this dilemma is to write some scripts, advance some "history," and see what happens.

The construction of relations in a script can be useful, sometimes. To phrase this in more pseudo-scientific jargonese, we need to construct a narrative model to suggest alternatives and insights. This strategy might benefit Weber and others when faced with the difficulty of tapping into the native point-of-view.

A great problem in the missionization of Native American people is how missionaries were initially regarded. Missionaries came without weapons, but were often accepted and made converts to some degree. How? What was the original structure involved? What was the nature of the encounter?

We can look at what might have happened when the first Jesuits met the Hurons. (I hope that Fr. Prucha will absolve me of any sins I might commit here.)

Imagine a day in February or March. It is cold and gray in Huronia. You are sitting in your village with hunger hovering around. The hunters are out, but there has been no fresh game in days. People are sick and dying. The world is dead. Suddenly, three black-robed Jesuits arrive. You look at them and communicate as best you can.

They have wonders. A mass kit. They open it. A Jesuit pulls out a splinter. What is it? A piece of the True Cross. He pulls out some bones. What are they? Relics of saints. You know what bones are about. What else? A porcelain statue of a man nailed to two boards. You look closely and see holes in the rib cage with blood running out. You know that splinters intruded into bodies cause illness. You know the power of bones. You know aspects of torture. Clearly, these guys have some powerful stuff.

They also have a drink. They call it the blood of their lord and savior. You think about that for a while. Finally, you ask them what they really want. They say "Your souls." It must have been a frightening experience.

I made all of this up, but such a tale can generate questions about the encounter. Weber talked of syncretism, but we do not have Timucua views of the mission. We know that missions provided vectors for disease and killed off the Georgia Guale and provided sitting ducks for English raiders. Missions were dangerous places to be.

What we really need also is an ethnography of the missionaries. Who were these people? What was their mind set? What were they trying to accomplish? How representative were they of the people who were to come after them?

Weber's point about chastity is well taken. In the Southwest particularly, it was admired because it showed that priests did have power. But given the missionary experience and the massive die-offs, I think something else was going on. There was a perception of the mission as inhabited by a doomed population. Missionaries knew the inhabitants would die off. Thus, their task was not to convert people in order to move them into mainstream society. The role of the mission was more a preparation for a good death and afterlife, a

good life leading directly to a beautiful death. Throughout mission records there are repeated expressions of joy about the deaths of faithful converts. There are hints of a death cult, a pre-Ghost Dance movement. There is a sense of sweet sadness (*triste*) in De Smet and others when they moved into the Northwest and viewed it as a virginal field for conversion.

George Phillips raised more questions than he answered. His description of the alcalde system was fascinating, but I have difficulty perceiving the situation, which seems to fit Erving Goffman's description of a total institution. I sensed the underlying structure of a prison with straw bosses or of a concentration camp with all of the associated behaviors that such a structure breeds. Also, there is a sense that it was a proving ground for leaders who would emerge and move in various directions, either toward resistance or acculturation. It was something of an officers' training school with appropriate attributes. Despite these many aspects, what Phillip's did not say and what upsets so many native Californians today, is the circumstances under which the missions started. Were these coercive institutions, sweeping up whole communities and forcing this new life upon them, or was it voluntary? Surely, it changed with time and place. Jay Miller reminded me that Raymond White's study of the Luisenyo mentions that shamans sent a son to the mission to learn about this new source of power, while other sons were sent into the hills for safety and others were trained at home. The strategy resembled a game theory in playing the options and hedging the bets.

Phillip's paper was strong on data and interesting in terms of devices. Imagine whips as thick as a wrist. When and how did these come in? The same sort of question can be asked in the Southeast. How and why did the Cherokees institute jails? These were strange things: people cages. Throughout, this is a transformation toward the brutal and the grotesque about which I would like to learn more.

I have little to say about Mary Young's spirited paper because I agree with most of it. She undertook an ambitious job in comparing five tribes over forty critical years and she accomplished her task well. Bill Fenton has taught us much about the Iroquois, but we know next to nothing about the Creek confederacy. We really need a good study of the Creeks, also the Caddoans and others. Young is right to distinguish between the Cherokee as more open to innovation and change, whereas the Creeks were closed, more like Southwestern Pueblos in their tight adherence to forms and hierarchy. She needs, however, to look more closely at the Chickasaw, who were more state-like, with ranks and stratification. This may have been a factor in their more rapid assimilation to Euro-American ways.

I would particularly like to put to rest the unfortunate term "harmony ethic" as applied to the Cherokees. Something like it did exist, but it became distorted in the literature. Robert Thomas introduced the term, and it was adopted by John Gulick who began its over elaboration. The "harmony ethic" was more a tendency and ideal than anything like a vital factor in social relations.

Sidney Haring's paper was also ambitious. He marched in where angels dared to tread, probably because of the pigs. His research contributes important evidence on the Crazy Snake Rebellion, the coexistence of two systems of law, and role of courts as mediators between towns and the nation. We need also to look at the Crazy Snake Movement in the context of emerging social classes. The Creeks were not a state, but classes were added to their society in the nineteenth century. Much of the Civil War in Oklahoma can be expressed as

class warfare, with elites and mixed bloods on the side of the South and conservatives and full-bloods joining the Union. The war took a terrible toll.

In its aftermath, Crazy Snake emerged as a preserver of traditions threatened by the Dawes and Curtis Acts. Simultaneously, there were similar movements in the other Southeastern tribes through the agency of the Four Mothers Society. There are strong parallels with the Cherokee Nighthawk, Keetoowah or Redbird Smith movement.

Harring is particularly sensitive the idea of politics as a cultural system with meanings. But how do we get at the native system of justice? Among the Cherokees, when I looked for notions of law and justice, I asked for native terms for the "harmony ethic." Jack Kirkpatrick and I corresponded about it, but found no solution. Instead, I learned that the Cherokee sense of justice is supported by human warmth and good will embodied in a native concept that connotes justice, righteousness, straightness, honesty, truth, and uprightness. It is considered a positive life force. Traditional Cherokee are extremely sensitive to its violation, which constitutes injustice. Thus, there are stories of debts pursued to the ends of the earth. Letters ask about a 5 cent loan made 10 years ago. There was a strict keeping of account books, particularly by the cooperatives (gadugi).

Feuds and factionalism can be traced to injustices. To push this further, underlying this sense of justice is a basic bipartite classification of people into opposed moral types: one of heart-soul-feeling exhibited in kind behavior and one of unmitigated evil. The classification is absolute. Someone does not shift categories or change morality over the course of a life time. A Cherokee may know someone for years before consigning that person to one or the other category. Once classified, however, the status is irrevocable. I also note parallels for the Creek. To become a member of a town, you are on probation for four years or so before you are fully incorporated. You have to prove that you are a good person.

A kind person (the opposition is kind/evil) can make mistakes, but he or she has an essential humanity and can be forgiven. Indeed, Cherokee had individual and institutional mechanisms for forgiveness, including crimes as serious as murder. If you entered a Green Corn ceremony and made reparations, you could be absolved of your sins. If the ethical breached endangers the physical or moral wellbeing of the group, the kind person will suffer consequences and give up his or her life if necessary.

There is a wonderful account of a murder trial where a "kind" man was sentenced to die. A week before his execution, he was released to settle his affairs. The appointed time for carrying out the sentence came and the man had not returned. Half an hour later, he stumbled in complaining that his horse died under him as he rushed back to be hanged. This shows clear solidarity with the group. Of such are martyrs made.

Those who are evil act from the darkness of their very souls. Such individuals may be excluded from humanity, regarded as socially dead, until they are actually killed. They cease to exist once they are so characterized. They are the moral equivalent of witches. In Cherokee history, political homicides are rooted in these beliefs and actions. Native courts which let people off, such as Ned Christy and Zeke Proctor, illustrate native ideals of traditional justice, in comparison to federal courts and justice.

Fred Hoxie reminds us that reservations were oppressive structures. Some of his paper was oriented around a rejection of notions of persistence. I am one of those soft-hearted, liberal scholars who thinks that cultural persistence is

always, or should be, there, and who find it, perhaps, where it isn't. There is tradition, but it is consistently, constantly, chronically being refined. Hoxie has a very dramatic script whose full implications need to be worked out. I think it is a very rich script, ready for a film, of Sword Bearer and his crew shooting up the agency. Hoxie has portrayed the scenario vividly. There was a dissatisfaction with traditional leaders like Plenty Coups. A crisis was going on, but we do not know how it fits into long term Crow patterns. What native meanings were involved. Was Sword Bearer a contrary, a warrior out to count coup. At a deeper level, Hoxie suggests a transformation in leadership based on age.

Max Weber haunts our conference, reminding us that systems of authority rely on the social relationship of leader and follower both. There have been institutes for Indian leaders, where everyone gets a crew cut and a pocket full of pens. But we also need institutes for followership. The two go together as a process. For Weber, there were three ideal types of authority: 1)-traditional, relying on longstanding normative sanctions; 2)-charismatic, which was less a personality trait and more an interactive concept involving a break with traditions and the new ways of prophets, which, if they take hold, create a new orthodoxy and tradition as they become routinized; and 3)-bureaucratic, a Western social invention in which the office not the person is obeyed. I can see a transformation among these types as Plenty Coups tried to orchestrate the situation and still remain aloof until the final outcome. Ultimately, authority fell to bureaucracy after this period of transition.

Another dimension present here is the problem of leadership thrust upon the young by suddenly raising them up to positions of power. This destroys or ignores the traditional bases of authority within society and can cause great misfortune. Let's remember Clyde Warrior, a very imposing figure, a Ponca over six feet tall with a deep voice. He was a founder of the American Indian Youth Council, and regularly traveled to Washington, DC to meet with BIA officials and various lobbying groups. At receptions, ladies with blue-tinted hair asked him what they could do for the Indians and he'd say "Give us guns!" He got a lot of attention, but he was a very disturbed person. All of the stress and strain led to alcoholism. He tried to believe that he was, indeed, the hope for the future as whites had told him. Everyone said that the young leaders were the hope for Indian society, but this challenged the authority structure of traditional native society. Clyde knew that respect had to be given back to the fathers and grandfathers before the sons and grandsons could fulfill their own destinies. There was a lack of appreciation of the generational nature of leadership. Clyde paid for this disjuncture with his life.

Don Fixico gave us an excellent background paper on termination, a compelling threat to the trust relationship between Indian tribes and the Federal Government. For Indians, trust was assumed to be permanent, infused with a sacred quality. Ever since John Marshall referred to the relationship as like that of a guardian to a ward, the social relationship has been confused or ignored. It never involved individuals, nor was it intended to. This was not the wardship of Robin to Batman. There is a profoundly legal side to these obligations.

We need to look at the power of words: Consider the multiple connotation of the word, "ward." Getting back to Fixico's paper, what if the word "termination" had not been used and the process was called "liberation"? Would it have had more appeal to various Indians with different degrees of

education or to different generations? Words and their connotations are important.

At any rate, there is no unilineal process moving inevitably from tradition to an iron cage-like bureaucracy. Charismatic aspects intrude throughout to provide processual fluidity.

Fred Ragsdale gave us a futuristic look at autonomy and a typology rich in permutations. He provided insights that may prove useful, although his distinctions are not always comparable and can not be simplistically lumped together. He did well to remind us of the preciousness of tradition and the need to guard it as the basis of distinctiveness. To preserve tradition is to preserve Indian culture and identity. Complete equality will probably mean an end to a native identity. While Indians have been quite successful with the law, Ragsdale's question remains: How can they win so much and still ultimately lose. Ragsdale's metaphor of the casino - that if you play long enough you will loose - may be inappropriate. We need to consider other games.

Compare the situation of the hand game (lahal) where people face off against each other as teams and one person hides two bones (one plain and one marked with a black band) in either hand. Everyone sings and plays drums. It is technically a game of chance, so you should be right 50 percent of the time. But the long-term results show this is not the case. Some win and others loose more than allowed for by the laws of chance. Essentially, people do not accept randomness. The guesser keeps trying to find a strategy for out-guessing the one holding the bones. They try to read each other's minds. It is a cognitive game. Staying in the game says something about being Indian, having power, and influencing fate. There are long-term winners and losers.

As I began, let me remind you that games, like meetings, are rituals. They provide a kind of divination, using bones - the "seeds" of regeneration, to connect with cosmic and human forces. The players become consumed with the possibility that it is the only game in town, and indeed it may be. The game is not only a test of individual powers, but must be regarded as a mode of social reproduction as well.

## FINAL COMMENTS

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Henry David Thoreau once wrote that if he saw someone coming down the street bent on doing him good, he would turn and run the other way. If anyone ever asks you to chair a conference and be its commentator, my advice is to turn and run the other way. It has been a fascinating, exhilarating, and exhausting experience.

My comments have been developing over the past few weeks as papers came in and as I reassessed my reaction to them. My thinking has been particularly influenced by the writing of two legal scholars, Charles Wilkinson at the University of Colorado and Robert Clinton at the University of Iowa. Wilkinson is not here, but Clinton is. I am not apologizing for what has happened to those ideas as they have filtered through my very non-legal mind, but I do feel compelled to make the standard disclaimer that any errors are my own fault.

The Struggle for Political Autonomy Conference was designed with a sense that native political autonomy has been steadily eroding under progressively heavier attacks until it reached a nadir or series of nadirs during the periods of allotment and termination. Afterwards, it experienced a kind of recovery. Our hope was that through careful organization and a judicious selection of outstanding scholars, we could test that assumption and encourage systematic analysis and persuasive interpretations of both the broad patterns and the rich detail of the history Native American political autonomy. It is for you to judge our success. I have found my involvement in this conference intellectually enriching far beyond my expectations.

The Struggle for Political Autonomy is a broadly encompassing title. We left our scholars enough rope that each could hang him or her self as high as he or she pleased. Despite this latitude, it seems to me that important themes unite these papers. Most obviously, political autonomy is a highly valued condition. Native people have used their autonomy to make continuing adaptations to a complex of outside forces and inside ambitions in order to maintain and maximize it. The uniqueness in these papers are determined by history, the underlying theme remains persistence.

In his influential 1971 article, "The Political Context Of A New Indian History," Robert F Berkhofer, Jr, reviews the various definitions social scientists have given to political behavior and voices the call for a broadened conception that embraces conflict and its resolution in whatever area of society it may be found, whether called religious, political, economic, or otherwise. With this Berkhofer points in two directions: one is toward areas of cultural expression that might otherwise be misunderstood as not directly germane to governments, the other is away from a preoccupation with tribes and toward internal factionalism. As Berkhofer argues, we will never significantly improve our understanding of Native American history until we look deeper and closer into the inner politics of native societies. Most of us who do Native American political history look to Berkhofer's essay for guidance and inspiration as we shape our ideas.

But Berkhofer did not address the question of autonomy directly, rather he built his argument on the assumption that autonomy in some form existed. From

that starting point, he advised us on how better to understand what autonomy meant within a tribal context.

Consider the word "autonomy." From the Greek, its literal translation is self-governing, but the idea of autonomy takes on meaning only as one group relates to another. Autonomy is meaningless to a group in total isolation. Further, autonomy is the vehicle by which a group both identifies and preserves its distinctiveness. As it governs itself, it defends the boundaries that separate it from all other groups. The Oxford English dictionary defines autonomy as "being independent, self-governing, making and administering its own laws. The condition of being controlled only by its own laws and not subject to any higher law." That sounds like the classroom definition of sovereignty. The same dictionary defines sovereignty as "supremacy in respect to power, domination, supreme dominion, authority, or rule; existing as an independent state." Sovereignty, of course, is a word with a history. Of French derivation, it is linked to the concept of the sovereign or king who ruled by the grace of God and knew no superior human force. From there, sovereignty entered European legal theory as a buttress for the emerging nation state system, and shows up in our academic consciousness thanks to John Marshall.

In 1831, the Cherokees called themselves a foreign nation and asked Marshall to agree. But to Marshall, foreign nations, as inferred in the Constitution, meant European nations and that meant sovereign nations. In Marshall's view, the Cherokee nation had asked him to pronounce on its sovereignty as a nation. His pronouncement, well known to all, split the difference between yes and no. The Cherokee nation was sovereign in some respects, but not in others. A European legal mind might have had trouble with such a thing, but Marshall's generation had been engaged in debate over just that problem. Could sovereignty be divided or shared? The American Federal system is predicated on the belief that it can. Just as the national government and the states share sovereignty, so could the national government and the Cherokee nation. Marshall did not question the autonomy of the Cherokee nation. Indeed, the fact of its autonomy contributed significantly to his conclusion that it was a semi-sovereign nation. The Commerce Clause supports Marshall's conclusion by equating Indian tribes with foreign nations and the states, both of which were sovereign to some degree. The Constitution had already raised the prospect of tribal sovereignty.

Despite Marshall's care in distinguishing between them, scholars have repeatedly confused autonomy for sovereignty. Sovereignty is a legal principal. Courts and theorists have refined and reshaped its meaning, but there remain constant threads.

One, it seems to me, is that sovereignty applies only through recognition. Sovereignty is a definition of legal rights which have abstract theoretical meanings, but not necessarily actual demonstrable meanings. Recognition is the key. The current controversy over the Federal recognition of unrecognized tribes suggests this. Unrecognized tribes, like the Cherokee nation over 150 years ago, seem to be asking the US to pronounce on their sovereignty. Until that judgement is forthcoming, those tribes, by definition, are not sovereign. The American colonies are another example. As colonies, they too were incapable of sovereignty by definition. But the absence of sovereignty does not preclude political autonomy. While sovereignty is a definition of theoretical rights, autonomy is the exercise of actual power. Unrecognized tribes enjoy a measure of autonomy depending on their circumstance. The recognition of sovereignty may alter those circumstances and enable a newly recognized tribe to

wield more power, but it may not. As for the colonies, benign neglect and 3000 miles of ocean permitted a degree of political power so sweeping that it bordered on sovereignty. But the key variable for both, as we try to understand their political histories, is autonomy, not sovereignty. Autonomy does not need recognition to exist. It was autonomy, not sovereignty, that native groups enjoyed before contact, and, I would argue, it is autonomy not sovereignty that should be our continuing scholarly preoccupation.

But, of course, autonomy is a changing concept. It exists by degrees. The reality of history impinges on the power of every group to enjoy independent self-government and we have no reason to think that this is a fact that came to America with the first European invaders. Indeed, given the extent of pre-disease population of North America, we have every reason to suppose that pre-contact intergroup relations were every bit as complex, tangled, and threatening to unmitigated autonomy as they were after contact, albeit in different ways and for very different reasons. We know that native groups governed themselves. We know that, while they defined and used power differently from Europeans, they understood its use and sought to maximize it in their relations with other groups. We know that trade, warfare, competition for resources, population and a host of other factors shaped the way native groups used power and, we also assume, in the history of intergroup relations, native people adapted both new ideas to current practice and current ideas to new experiences. The European paper trail provides us with abundant evidence of this later on, and much of the recent scholarship on native-European contact has explained how and why such adaptations took place.

We know enough about culture and human behavior to understand that adaptation is a natural, normal process, and we are beginning to discover the details of how the policies of native groups turned adaptations into systems for dealing with threats to their autonomy. Fortunately, I do not have to cite the examples. The papers we have heard do that for me. On one point they are unanimous: autonomy is the condition these people have sought to preserve. Unlike sovereignty, autonomy has not been an abstract legal principal. It has been the means for survival -- the power to establish and defend the boundaries that define distinctiveness and separation.

The papers have raised many questions central to the understanding of autonomy, and it is clear that we have a long way to go before we can be confident about answers. The most obvious and basic question is the one we historians always ask about everything. What is cause and what is effect? Does social change drive political change, or vice versa? Or are both driven by economic change, as Gary Anderson was on the verge of suggesting yesterday.

We heard a lot about Christian missions, but little about native religion. The book Ray Fogelson edited, *THE ANTHROPOLOGY OF POWER*, deals mainly with religious themes, which simply underscores the realization that the exercise of political power in Native America is largely a religious phenomenon.

My job is not to restate the questions and I do not have to come up with answers, since most of the papers are small portions of larger manuscripts that will soon be published as books filled with the answers. But there are three things that I do want to consider, not necessarily because they are the most important, but because I know something about them.

One was generated by Fred Hoxie's paper. I think Fred's paper was extraordinary and when his book is published it will force us to completely rethink everything we thought we knew about the reservation period. What fascinated me about what Fred had to say was that there was an enormous

amount of unexpected and undefined latitude within the reservation context because the system was grossly inefficient. This goes to the notion of autonomy as power, regardless of the extent to which recognition or sovereignty exists. There is a whole literature on total institutions. In the historiography of slavery in the 1960s and 1970s, total institutions became one of the models that many scholars chose to interpret that institution.

The historiography of slavery is extraordinarily volatile, very exciting, and it has gone through a recent and quite important permutation, the focus of which is to attack the notion of total institution. John Blassingame, in *THE SLAVE COMMUNITY*, calls slavery an irrational institution. It was irrational because it could exist with so many holes, so much loose fabric, so many opportunities to respond and adapt in unexpected ways. This, I think, is the concept that Fred is telling us about. The reservation, whether or not the legislation established a system, emerges as an irrational institution, characterized by inefficiency and confusion. It provided opportunities that Fred has been able to discover, but that other scholars have not noticed. Reservation Indians apparently enjoyed an unexpected and surprising degree of autonomy.

The second thing I want to mention was an idea that was stimulated by Mary Young's paper, and reinforced by one of Theda Perdue's comments. We have talked at lot about adaptation and change and the dialectic that goes on here. And we have talked a lot about the process by which autonomy is exercised and political power is utilized in the process of arranging relationships between native groups and external groups, whether they are Native, European, or Anglo-American. One of the things that Mary touched on and that I want to underscore is that there is a parallel process of governmental organization, reorganization, and adaptation going on here that emerges very strongly in the form of a centralized structure -- a structure that does not look very European if you are looking at the Creeks, but a structure that does look very European if you are looking at the Cherokees -- which has a common denominator and a common goal, and that is to do something more to develop and enforce a body of relationships with the outside world.

The intent is to impose discipline internally and create an internal political structure that is able to execute policy that has been designed in order to impose a degree of control over the domestic population. You think about the big challenge that Alexander McGillivray had in the 1780s. Its a response to a series of town kings who were conducting their own foreign policy with Georgia, threatening, not only McGillivray's ambitions for the future of the Creek confederacy, but also threatening the survival of the confederacy by unsettling its territorial integrity as well as its political autonomy.

McGillivray writes in one of his letters that he wished that the Creeks were civilized like other folks because then they would have had a treason law that provided for the execution of traitors, and, you can be certain that if they had it, McGillivray would have seen to it that they would have been executed. As it was, he did the next best thing by destroying all their property and putting them under an enormous degree of political and social pressure. The same phenomenon occurred in the 1820s. Here it was the Law of Polecat Springs, the treason law that Sid Harring was talking about, and it came into existence for one purpose: to exercise internal control, to devise a system by which domestic political discipline is enforceable so as to create a united front. The internal events are obviously linked to the external ones. They are, by no stretch of the imagination, separated, but each is vitally important for understanding the other and I am not suggesting that Mary Young does not

understand this; she has read my book, so I know she does. I just wanted to underscore this point.

The third idea came to me initially as I was listening to Richard White's paper and comment, and then came to me again when I heard Sid Harring's paper. That is ethnicity. There is an enormous literature, generally by cultural anthropologists and sociologists, on its definition, and the processes and mechanisms by which it can be analyzed. I want to avoid getting bogged down in that, but one of the key elements in the emergence of this subject is the notion of ethnic boundaries and the maintenance of those boundaries. We assume all sorts of patterns of behavior based upon the existence of those boundaries and based upon the need to maintain, preserve, and protect them. Here we have the situation in the Great Lakes country which, as White suggests, is extraordinarily fluid. The basic political units are villages occupied by people from a variety of different ethnic groups. Dave Edmunds went on to underscore that point and Helen Tanner has been telling me that for 15 years. That's the first thing she ever drummed into my head. There is no such thing as an ethnically clear, mono-ethnic group, in a village in this area. That, of course, raises all sorts of elements of confusion about how you transform and link political behavior to ethnic boundaries and locate them in these areas. This is one of the reasons I began my remarks by taking about Berkhofer's essay, though most of you know about it. I am certain that Berkhofer is absolutely right that the only way you deal with these issues is to go inside and look at how the factional conflicts work. Harring's paper points to a different kind of ethnic diversity. There were many blacks among the Creeks and through the allotment process they were granted citizenship. Yet they had been the slaves of Creek owners and, as we heard, slavery in the Creek nation was real. The reconstruction treaties in Indian territory, as they did not do elsewhere, required that the communities of former masters accept their former slaves on a basis of political equality. As Harring mentioned, the Crazy Snake unrest involved a lot of black Indians. I absolutely agree with Harring's argument about parallel lines of legal action, and I am gratified that he sees the Law of Polecat Springs, which is very important to me, as re-emerging in this period. I am not sure that I believe it, but I am certainly glad to see that someone does.

The point still remains: How do you explain all of these black Crazy Snake Indians? There are a lot of them. You see them in all of the photos of the accused being hauled off in wagons to jail. I don't think those people were assimilated, acculturated Creeks. There is nothing in the history of the Creeks to make me think they were. I do not think those black Creeks were traditionalists when they responded to the pressures of allotment.

I think it is clear that autonomy is a meaningless concept to a group in isolation. It is also true that intergroup relationship prevented a society from enjoying unlimited, unmitigated, total autonomy. The leaders of every native nation have always had to weigh their autonomy against their power, to balance their autonomy against their dependence, and to modify and adapt their autonomy in response to the challenges presented by outsiders. We assume, although we do not know for sure, that this challenge intensified after the European invasion, and we have also assumed that as native power declined relative to European power, native political autonomy eroded away.

What these papers suggest is that erosion is not a very good model. It is too predictable, too smooth, too linear. It overlooks obscure human reserves and imagination. It underestimates adaptation. It offers no place for the accidental and the unexpected. Native American political autonomy adjusts,

retreating and advancing, as events and the ingenuity of human beings permit.  
If these papers tell us anything, they say that autonomy endures.

Newberry Library Conference on  
Themes in American Indian History: II

## THE STRUGGLE FOR POLITICAL AUTONOMY

16-19 February 1989

Conference Chair: Michael D. Green, History, Dartmouth College

Thursday, Feb. 16

5-7 PM Session One: An Introduction to the Political History of American Indians

Paper:

Raymond D. Fogelson, Anthropology, University of Chicago, "The Context of American Indian Political History: An Overview and Critique"

Comments:

The Audience

Friday, Feb. 17

9 AM - 11:30 AM Session Two: Political Autonomy Without European Control

Papers:

Richard White, History, University of Utah, "The 'Middle Ground' for Indians in the Great Lakes"

David J. Weber, History, Southern Methodist University, "Blood of Martyrs; Blood of Indians. Toward A More Balanced View Of Spanish Missions in Seventeenth Century North America"

Commentators:

R. David Edmunds (Cherokee), Texas Christian University.

Olive Dickason (Metis), University of Alberta

10 AM - Coffee

12 Noon Roundtable discussion "Indian Reorganization Act (IRA) On The Plains" led by Thomas Biolsi, Rockefeller Foundation Postdoctoral Fellow, McNickle Center, and John Painter, History, Northern State University

This conference is funded by a grant from  
The National Endowment For the Humanities.

1 PM - 3 PM Session Three: Tribal Autonomy Under Siege

Papers:

Mary Young, History, University of Rochester, "Tribal Reorganization in the Southeast, 1800 - 1840"

George H. Phillips, Rupert Costo Professor Of American Indian History, University of California at Riverside, "The Alcaldes: Indian Leadership in the Spanish Missions of California"

Commentators:

Theda Perdue, History, University of Kentucky

Gary C. Anderson, History, Texas A and M University

3 PM Coffee

3:30 - 5:30 PM Session Four: The Emergence of Modern Polities in the Reservation Era.

Papers:

Frederick E. Hoxie, The Newberry Library, "Crow Leadership Amidst Reservation Oppression"

Sidney Haring, CUNY School of Law, Queens College, "Crazy Snake and the Creek Struggle For Sovereignty: Native American Legal Culture And American Law"

Commentators:

Loretta Fowler, Anthropology, City University of New York

James Schlender (Ojibwa), Great Lakes Indian Fish and Wildlife Commission

5:45 PM Reception and Exhibit Opening:

Lobby, Donnelley (West) Gallery, "Organizing the Unknown: German Science and the American West"

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Saturday, Feb. 18

9 - 11 AM Session Five: Self Determination and Termination: The Paradox of Modern Indian Autonomy

Papers:

Donald L. Fixico (Creek, Seminole, Sac and Fox, Shawnee), History, University of Wisconsin, Milwaukee, "Tribal Governments and the Struggle Against Termination"

Fred L. Ragsdale (Chemehuevi), School of Law, University of New Mexico, "A Non Fly In Amber: The Modes Of Tribal Government"

Commentators:

Professor F. P. Prucha, S.J., History, Marquette University

10 PM Coffee

11:30 - 12:30 PM Session Six: A Personal View

Paper:

Joe DeLaCruz, Quinault Tribal Chair, "Reflections On The Struggle For Political Autonomy"

Comments:

The Audience

12:30 PM Box Lunches provided.

1 - 2:30 PM Session Seven: Conference Commentaries

Michael D. Green

Raymond D. Fogelson

Comments:

The Audience

Evaluations

Restrooms and vending machines are on the First Floor, West End. Restrooms are also on the East end of other floors.

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